# (17,418.)

## SUPREME COURT OF THE UNITED STATES.

### OCTOBER TERM, 1899.

No. 304.

THE LAS ANIMAS LAND GRANT COMPANY, APPELLANT,

*vs.*

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 13, 1900.

1 UNITED STATES OF AMERICA, } ss:
*Territory of New Mexico,* }

Be it remembered that heretofore, to wit, on the second day of March, A. D. 1893, there was filed in the office of the clerk of the court of private land claims, at the city of Santa Fé, Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, } ss:
*Territory of New Mexico,* }

In the United States Court of Private Land Claims.

Between—

THE LAS ANIMAS LAND GRANT COMPANY, Petitioner,
and
THE UNITED STATES OF AMERICA, Defendant. } Petition.

To the honorable the chief justice and associate judges of the court of private land claims:

Your petitioner, The Las Animas Land Grant Company, a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Kentucky, and a citizen of said Commonwealth, brings this its petition against The United States of America, and thereupon alleges and complains:

1. That on December 8, 1843, Cornelio Vigil and Ceran St. Vrain, residents of the then department of New Mexico, a department of the Republic of Mexico, petitioned to his excellency, Manuel Armijo, the then governor of the said department, to grant to them all the land in the said department "which embraces the Rivers Huerfano, Pisipa and Cucharas, so far as their confluence with the Napesta and with the Animas;" that said petition was accompanied by a deseno or map, showing the tract of land so as aforesaid solicited; that upon the receipt of said petition and map the said governor, on December 9, 1843, conceded the said petition, and directed "the justice of the peace to whom it belongs, in order that he give the possession to which the petitioners refer;" and that thereupon, to wit: on December 25, 1843, the said Vigil and St. Vrain applied by petition to the justice of peace of the proper jurisdiction to be placed in possession of the said tract of land, so as aforesaid granted to them; that thereupon, to wit: on January 2, 1844, the citizen

3 Miguel Sanches, justice of the peace of the proper demarcation, placed the said Cornelio Vigil and Ceran St. Vrain in full and lawful possession of the said tract of land so as aforesaid petitioned for by, and granted to them, and executed to them his proper and lawful act of juridical possession, then and there affixing to the said deseno or map his rubric or seal. Copies and translations of the said petition, grant and papers of juridical possession, together

with copies of the said des-no or map, are herewith filed in duplicate. The originals of said papers are not within the control of your petitioner, but are in the possession of the defendant, and are filed in the office of the United States surveyor general for the State of Colorado.

2. That the said Vigil and St. Vrain, having been placed in full and lawful possession of the said tract of land as aforesaid, they and their grantees remained in possession thereof, as your petitioner is informed and believes, up to the time of the cession of the department of New Mexico in the year 1848 to the defendant by the Republic of Mexico.

3. That on March 7, 1844, the said Vigil and St. Vrain, according to the laws and customs of the said Republic of Mexico, made and executed a deed of donation to one Eugene Leitensdorfer, a naturalized citizen and resident of the said Republic, for an undivided one-sixth interest in the said grant of land commonly known as and called the Las Animas grant; that on March 7, 1844, the said Vigil and St. Vrain, in like manner, made and executed a deed of donation to one Manuel Armijo, a citizen of said Republic, for an undivided one-sixth interest in said grant, and that on the same day the said Vigil and St. Vrain, in like manner, made and executed a deed of donation to one Donaciano Vigil, a citizen of said Republic, for an undivided one-sixth interest in said grant. And your petitioner is informed and believes that on March 11, 1844, the said Vigil and St. Vrain in like manner made and executed a deed of donation to one Charles Bent for an undivided one-sixth interest in the said grant, and that at the time said deed was made to said Bent, he was an American citizen, and remained such until the cession of the department of New Mexico to the United States of America, and that your petitioner makes no allegation that such deed to said Bent vested in him any lawful right or title to the said grant, because it was provided by article 9 of the law of the Republic of Mexico concerning the rights of foreigners to acquire and possess real estate, promulgated March 11, 1842, which said law was in force in said Republic at the time of the making of the said deed, that "These provisions do not include the departments bordering on, or bounding with, other nations, with respect to which departments special laws of colonization will be enacted, without which property may never be acquired in them by foreigners, unless by express license of the supreme government of the Republic."

4 4. And your petitioner further shows that at the time of the ratification of the treaty between the United States and the Mexican Republic, commonly known as the treaty of Guadalupe Hidalgo, the said Vigil and St. Vrain and their heirs and assigns were in lawful, full and absolute possession under the laws, usages, and customs of the Republic of Mexico, of the said grant or tract of land commonly known as the Las Animas grant; and that by virtue of such possession under the said grant, and of the provisions of the said treaty, they and each of them became invested, under and by virtue of the said treaty, and the Constitution and laws of the United States of America, with a fee-simple title in and to cer-

tain undivided interests in and to the said tract of land so as aforesaid granted the said Vigil and St. Vrain; and that the said Cornelio Vigil and Ceran St. Vrain, their heirs and assigns, have been and remained in possession as owners in fee-simple and by inheritance of the said grant or tract of land, so as aforesaid granted, from the day and date of said grant to the present time, and that the interests in the said grant have never been separated or set apart by partition or otherwise; and that your petitioner holds possession of, and claims title to, the said tract of land under and by virtue of mesne conveyances from the said Cornelio Vigil, Ceran St. Vrain, Eugene Leitensdorfer, Charles Bent, Manuel Armijo and Donaciano Vigil, their heirs and assigns; and that your petitioner acquired such title in good faith, and for valuable considerations, and is now in the lawful, quiet and undisturbed possession of the said grant or tract of land.

5. And your petitioner further shows that the said grant or tract of land is situated in the counties of Pueblo, Huerfano, Otero, Bent and Las Animas, in the State of Colorado, and is bounded and described as follows, to wit:

Beginning at the summit of the Culebra peak on the boundaries of the grant to Beaubien and Miranda, running thence easterly to a point of Trementin creek, near where the same flows into the Purgatoire or Las Animas river; thence northerly and easterly along the easterly side of the said Purgatoire river, until a straight line projected strikes the Arkansas river below the town of Las Animas; thence up the center of the said Arkansas river to a point twelve miles below the mouth of the St. Charles river; thence southwesterly in a straight line to the summit of the range of the Raton mountains; thence following the summit of said mountains to the point or place of beginning.

That the said grant or tract of land was surveyed by the United States surveyor general for the State of Colorado, a copy of the plat of which survey is hereunto annexed; and that the said grant or tract of land contains three million six hundred and forty thousand four hundred and sixty-five and twenty-one one hundredths (3,640,465.21) acres.

6. And your petitioner further shows that some time in the year 1857, pursuant to the provisions of an act of Congress in such case made and provided, the then owners of the Las Animas grant presented the same for confirmation to the surveyor general of the Territory of New Mexico; that pursuant to the provisions of said act the surveyor general took testimony as to the nature, character, extent and *bona fides* of the said grant, and on September 17, 1857, made and rendered his decision in favor of the validity of the grant in its entirety, and confirmed the same, and transmitted the said report and confirmation to the Congress of the United States for its action in the premises.

7. That the said Congress, by an act entitled "An act to confirm certain private land claims in the Territory of New Mexico," approved June 21, 1860, enacted by the first section thereof: "That the private land claims in the Territory of New Mexico, as recom-

mended for confirmation by the surveyor general of that Territory in his letter to the Commissioner of the General Land Office, of the 12th of January, 1856, designated as numbers 1, 3, * * * 17, 18, * * * be, and the same are, hereby confirmed: Provided * * * that the claim number 17 in the name of Cornelio Vigil and Ceran St. Vrain shall not be confirmed for more than eleven square leagues to each of said claimants." And that by the second section of said act it was further enacted * * * "That in surveying the claims of said Cornelio Vigil and Ceran St. Vrain the location shall be made as follows, namely: The survey shall first be made of all of the tracts occupied by actual settlers holding possession under titles or promises to settle, which have heretofore been given by said Vigil and St. Vrain, in the tracts claimed by them, and, after deducting the area of all such tracts from the area embraced in twenty-two leagues, the remainder shall be located in two equal tracts, each of a square form, in any part of the tract claimed by the said Vigil and St. Vrain, selected by them, and it shall be the duty of the surveyor general of New Mexico immediately to proceed to make surveys authorized and required by the terms of this section." And that by the fourth section of said act it was further enacted: "That the foregoing confirmations shall only be construed as quitclaims and relinquishments on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

6 8. And your petitioner further shows that this act of Congress was not "the final action of Congress on such claim" as contemplated by the provisions of the eighth section of the act of Congress of July 22, 1854, entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, etc.," and that it vested no title in either Vigil or St. Vrain, their heirs or legal representatives, in the said Las Animas grant, or any part or parcel thereof.

9. That the said Congress on February 25, 1869, passed a further act entitled "An act to amend an act entitled, 'An act to confirm certain private land claims in the Territory of New Mexico,'" and that by the first section of the said act it was provided "That the lands confirmed by the statute of June 21, 1860, should be adjusted according to the laws of the public survey as nearly as practicable, and the claims of all actual settlers upon the tracts heretofore claimed by said Vigil and St. Vrain, holding possession under titles or promises to settle, which had been made by said Vigil and St. Vrain, or their legal representatives, prior to the passage of this act, who may establish their claim within one year from the passage of this act to the satisfaction of the register and receiver of the proper land district, shall in like manner be adjusted according to the subdivisional lines of survey so as to improve the land so settled upon and purchased." That the second section enacts that lines of the public surveys are to be run in the regions where a proper location would place the Vigil and St. Vrain claims, and that the expense of the same should be paid out of the treasury, "yet before the confirmation of the said act of June 21, 1860, shall become

legally effective, the said Vigil and St. Vrain, or their legal representatives, shall pay the cost of so much of said survey as inures to their benefit respectively."

10. And your petitioner further shows that under the provisions of the said act of Congress of February 25, 1869, the register and receiver of the land office at Pueblo, in the State of Colorado, made awards of tracts of land to actual settlers upon said Las Animas grant, holding possession under titles of premises to settle, previously made by the said Ceran St. Vrain or his legal representatives, as follows, to wit:

| | | |
|---|---|---|
| Charles Autobees | 686.17 | acres |
| Norton W. Welton | 760. | " |
| Joseph B. Doyle's heirs | 1,924.99 | " |
| Helen N. McCormick | 200. | " |
| George F. Streeter | 160. | " |
| George W. Schofield | 3,593.06 | " |
| Henry W. Jones | 5,852.40 | " |
| 7 Estafana Hicklin | 3,118.72 | acres |
| Field & Kronig | 322.63 | " |
| William W. Bent's heirs | 2,085.51 | " |
| Francisco & Daigre | 1,720. | " |
| Romuolda Luna Boggs | 2,040. | " |
| William Craig | 73,288.02 | " |

Aggregating ninety-seven thousand five hundred and fourteen and fifty-three one-hundredths (97,514.53) acres, equivalent to twenty-two square leagues; that patents were subsequently issued by the United States to the said confirmees for the said tracts of land so as aforesaid awarded to them, respectively, and that all such patents are now subsisting and unvacated; and that all of the said claimants to whom awards were made as aforesaid were derivative claimants under Ceran St. Vrain, and derived their title to the said tracts of land so as aforesaid awarded and patented to them, as settlers, colonists or derivatives, by deeds of conveyance made and executed by said St. Vrain subsequent to the passage of the aforesaid act of June 21, 1860; except that the said William Craig derived his title to a small tract of land forming a portion of the land awarded to him by deed from Ann Caroline Houghton, to whom the said tract of land had been conveyed by Ceran St. Vrain and Spruce M. Baird by deed dated November 5, 1859; that other claims to tracts of land within the said Las Animas grant were presented by the derivative claimants of the said Vigil and St. Vrain to the said register and receiver, which aggregated eighty-five thousand nine hundred and thirty-nine and thirty-two one-hundredths (85,939.32) acres, which said claims were disallowed and rejected by the said register and receiver.

11. And your petitioner further shows that no application was, or has been made by the said Ceran St. Vrain, or by the heirs of the said Cornelio Vigil (the said Vigil having been killed at the massacre at Taos, January 19, 1847), or by any grantee or grantees of them or either of them, to the Congress of the United States, to

confirm the title in them, or any or either of them, to the said tract of land, commonly known as, and called, the Las Animas grant, or to any part thereof; that neither the said St. Vrain, or his heirs, or the heirs of the said Cornelio Vigil, accepted or assented to the provisions of the said acts of the Congress of the United States of June 21, 1860 and February 25, 1869, and that they, or either of them, or their heirs or legal representatives did not receive or accept under the award or patent of the United States any tract or tracts of land forming a part of the grant or tract of land so as aforesaid granted to the said Vigil and said Vrain, commonly known as, and called, the Las Animas grant.

8 12. And your petitioner shows that by and under the laws, customs and regulations of the Republic of Mexico grants of land could lawfully be made for the purpose of colonization and agriculture, by the governors of the various Territories and departments, and by the various States of the Republic, to empresarios, to families and individuals; that such grants of the public domain were sometimes of tracts designated by well-defined boundaries, sometimes of a specific quantity of land lying within exterior boundaries embracing a greater amount, and sometimes of places by names, when they are well known and thus capable of ready identification; that a grant to an empresario was a grant of a tract of the public domain exceeding eleven square leagues, to one who should introduce and settle thereon as colonists a number of families; that the date of the cession or grant of lands to the empresario constituted an inviolable law for the right of property and legal ownership of such lands; that from such date the empresario could lawfully alienate all or any part of his lands, and that by the delivery of juridical possession of any such tract of land to an empresario, the said tract of land became, and was, segregated from the public domain, and the said grant became a grant of a specific tract of land to the empresario.

13. And your petitioner further shows that by said report of the surveyor general of New Mexico, and by the provisions of the act of Congress of June 21, 1860, the *bona fides* of the said grant as an empresario grant to the said Cornelio Vigil and Ceran St. Vrain was recognized and confirmed by the Government of the United States of America; and it was thereby declared that the said claim asserted by Cornelio Vigil and Ceran St. Vrain was valid under the laws of Mexico, and that it was entitled to recognition and protection by the United States of America, by the stipulations of the treaty of Guadalupe Hidalgo; and that the said confirmation of the twenty-two square leagues to the derivatives of the said Cornelio Vigil and Ceran St. Vrain was a recognition of the empresario character of the said Las Animas grant by the Government of the United States of America; and that the said acts of Congress of June 21, 1860, and February 25, 1869, could only have been, and were, enacted to carry into effect the laws, customs and regulations of the Republic of Mexico respecting grants to empresarios, which guaranteed the contracts which the empresarios should make with the families brought out by them at their expense; and operate, under the provis-

ions of the said acts, only as a quitclaim and relinquishment on the part of the Government of the United States of America of such land of such derivative claimants; and that the granting by the United States of the patents to the said derivative claimants of Ceran
9 St. Vrain, as aforesaid, acted as a declaration by the United States that the claims asserted by the said derivative claimants were valid and subsisting under the laws of Mexico, and that they were entitled to recognition and protection by the stipulations of the treaty of Guadalupe Hidalgo; and that the said several tracts of land might have been located under the laws of Mexico on the tract of land so as aforesaid granted to Cornelio Vigil and Ceran St. Vrain, and are now correctly located and embrace the premises granted or promised to the said parties respectively, as derivatives or colonists of the said Ceran St. Vrain; and that the title in fee-simple to the remainder of the said Las Animas grant is now in the heirs, successors and assigns of the said Cornelio Vigil and Ceran St. Vrain; and that no final action of Congress has been had as to the remainder of the said Las Animas grant, pursuant to the said provisions of the said act of Congress of July 22, 1854.

14. And your petitioner further shows that the said Manuel Armijo, being so as aforesaid the owner in fee-simple of an undivided one-sixth interest in and to the said Las Animas grant, departed this life some time during the month of January, A. D. 1854; and that on October 16th, 1858, Ramona Armijo, sole heir of the said Manuel Armijo, and Luis Maria Baca, her husband, for a valuable consideration, sold and conveyed to one Cassandra E. Baird all their right, title and interest in and to the undivided one-half of the sixth part of the said tract of land so as aforesaid granted to the said Cornelio Vigil and Ceran St. Vrain, commonly known as the Las Animas grant, as will more fully appear by reference to the said deed of conveyance, to which, for greater certainty, your petitioner begs leave to refer; that the said Cassandra E. Baird, being so as aforesaid seized in fee-simple of such undivided interest in and to the said Las Animas grant, the Government of the United States of America, pursuant to the statutes in such case made and provided, at the March term of the United States district court of the third judicial district of the Territory of Colorado, libeled the said undivided interest of the said Cassandra E. Baird in and to the said grant; and that the said interest in the said grant was, at the May term of said court, in the year 1863, by the decrée of said court, declared forfeited to the Government of the United States of America, and ordered to be sold by the proper officer of the Government of the United States; that on the 14th day of September, anno Domini 1863, the said interest was offered for sale, pursuant to the order of the said court, by the United States marshal of the Territory of Colorado, and Ceran St. Vrain being the highest and best bidder for the same, at the sum of one thousand dollars ($1,000), the said interest in said
10 grant was struck off to him; that on the said September 14, A. D. 1863, the United States marshal for said Territory made and executed a deed for the said forfeited interest in said

grant to the said Ceran St. Vrain, as will more fully appear by reference to the said deed, to which, for greater certainty, your petitioner begs leave to refer; that under and in pursuance of said deed the said Ceran St. Vrain entered into possession of the said undivided interest in and to the said Las Animas grant; and that, being so seized as aforesaid, the said Ceran St. Vrain departed this life on or about December 28, A. D. 1870, leaving him serviving his children and heirs-at-law, as follows, to wit: Vicente St. Vrain, Felix St. Vrain and Felicite St. Vrain; that said children of said St. Vrain became, pursuant to the statute in such case made and provided, the owners in fee-simple, each of an undivided one-third interest in and to so much of said grant commonly known as the Las Animas grant, as was held and owned by their father, the said Ceran St. Vrain, at the time of his death; that the said Vicente St. Vrain, being so as aforesaid seized of an undivided interest in and to said grant, married Amelia Rohmen, and departed this life some time in the year 1875; and that, by the last will and testament of said Vicente St. Vrain, he devised and bequeathed to his said wife Amelia Rohman St. Vrain all his property, both real and personal, which said real property included the undivided third interest of, in and to the last aforesaid undivided interest in and to the said Las Animas grant; that the said Felicite St. Vrain, daughter of said Ceran St. Vrain, deceased, being so as aforesaid seized of an undivided interest in and to said grant, married one Macario Gallegos of the county and town of Mora in the Territory of Mexico, and, being so as aforesaid seized, the said Felicite St. Vrain and Macario Gallegos, her husband, did, on or about the 3d day of January, 1887, for a valuable consideration, sell and convey to the Cleveland and Colorado Cattle Company all their right, title and interest in and to so much of the said Las Animas grant, which was as aforesaid confiscated and forfeited to the Government of the United States of America and sold by the said Government of the United States to said Ceran St. Vrain, deceased, as aforesaid, as will more fully appear by reference to said deed, to which, for greater certainty, this petitioner craves leave to refer; that the said Amelia Rohman St. Vrain, some time after the death of her husband, married John B. Tays, and is now a resident of the State of California, and the said Amelia, being so as aforesaid seized, she and John B. Tays, her husband, did, on or about December 2, 1886, for a valuable consideration, sell and convey to the Cleveland and Colorado Cattle Company all their right, title and interest in and to so much of the said Las Animas grant, which was as aforesaid confiscated and
11 forfeited to the Government of the United States, and by it sold and conveyed to said Ceran St. Vrain, deceased, as aforesaid, as will more fully appear by reference to said deed, to which, for greater certainty, your petitioner craves leave to refer. That the said Felix St. Vrain, being so as aforesaid seized, did on or about May 8, 1880, sell and convey all his right, title and interest in and to the said Las Animas grant to one George W. Thompson, his heirs and assigns, as will more fully appear by reference to said deed, to which, for greater certainty, your petitioners craves leave

to refer; that said Thompson, being as aforesaid seized, and being also seized of divers other undivided interests in said grant, on or about April 30, 1881, for a valuable consideration, sold and conveyed to William Craig, his heirs and assigns, a certain undivided interest in and to the said Las Animas grant, in said deed of conveyance particularly described, as will more fully appear by reference to said deed, to which for greater certainty, your petitioner craves leave to refer; and that, by a certain other deed bearing even date the said Thompson sold and conveyed, for valuable consideration to the said Craig, his heirs and assigns, a certain other undivided interest in and to the said Las Animas grant, in said deed of conveyance particularly described, as will more fully appear by reference to said deed, to which for greater certainty, your petitioner craves leave to refer; and that the said William Craig, being so as aforesaid seized, on or about June 22, 1883, sold and conveyed for a valuable consideration, to Henry M. Claflin, his heirs and assigns, an undivided interest of one hundred thousand (100,000) acres of, in and to the said Las Animas grant, as will more fully appear by reference to the said deed, which for great- certainty, your petitioner craves leave to refer; and that the said Craig, being so as aforesaid seized, on or about December 3, 1883, sold and conveyed to John Coon, his heirs and assigns, for a valuable consideration, an undivided interest of five hundred thousand (500,000) acres of, in and to the said Las Animas grant, as will more fully appear by reference to the said deed, to which, for greater certainty, your petitioner craves leave to refer; that the said Henry M. Claflin and John Coon, being so as aforesaid seized, on or about April 8, 1885, for a valuable consideration, sold and conveyed to the Cleveland and Colorado Cattle Company, its successors and assigns, the undivided interest of six hundred thousand (600,000) acres of, in and to the said Las Animas grant, so as aforesaid conveyed to them as will more fully appear by said deed, to which, for greater certainty. your petitioner begs leave to refer; and that, by reason of the aforesaid conveyance of Felix St. Vrain and his grantees, the Cleveland and Colorado Cattle Company became seized of a certain
12 other undivided interest in and to so much or the said Las Animas grant, which was as aforesaid confiscated and forfeited to the Government of the United States, and by it sold and conveyed to the said Ceran St. Vrain, deceased, as aforesaid, and that all the right, title and interest of the said The Cleveland and Colorado Cattle Company in and to the said Las Animas grant is now vested in your petitioner.

15. And your petitioner further shows that the said Ceran St. Vrain, being then and there seized of a large undivided interest in fee simple in and to said Las Animas grant, did, on June 12, 1867, lease a portion of said grant to the Government of the United States of America, by indenture of lease duly signed, sealed and acknowledged, as will more fully appear by reference to said lease, to which, for greater certainty, your petitioner craves leave to refer; and that such lease was for the period of fifteen years, and at annual rental of one dollar ($1.00); and that under and by virtue of

said lease, the said Government of the United States of America did enter into possession of said tract of land, and erected a Government post or fort on the same, and that said fort so erected on said tract of land was known and designated as New Fort Lyon. And that the said Ceran St. Vrain, on the same day and date, by indenture of lease, demised and leased to said the Government of the United States of America a certain other tract of land, being a part of said grant, and lying within the exterior limits of the same, as will more fully appear by reference to the said lease, to which, for greater certainty, your petitioner craves leave to refer; and that said lease was for the period of fifteen years, and at an annual rental of one dollar ($1.00), and that under and by virtue of said lease, the Government of the United States of America did enter upon, and take possession of said tract of land, and erected a Government post or fort on the same; and your petitioner is informed, and believes it to be true, and therefore avers, that the said Government of the United States ratified and approved the said leases, and that it paid to the said Ceran St. Vrain, for the period of fifteen years, the said rent reserved by the said leases.

16. And your petitioner further shows that the said United States of America, the defendant herein, is, and of right ought to be, estopped from setting up or asserting any title to the said grant by reason of the aforesaid proceedings, orders and decrees by it had and made against the undivided interest of the said Cassandra E. Baird in and to the said Las Animas grant, and the sale and conveyance of the said interest by the said United States marshal of the Territory of Colorado, as above fully set forth; and because the said United States of America, the defendant herein, is, and
13 of right ought to be, estopped from asserting title to the said Las Animas grant, or any part thereof, by reason of its tena-cy of certain parts of the said grant, under and by virtue of the said two certain leases accepted by it from the said Ceran St. Vrain, as above more fully set forth.

17. And your petitioner further shows that no person or persons are in possession of the said grant or tract of land, or any part thereof, holding or claiming to hold by reason of any right or title to the same, adverse to your petitioner, and derived from the governments of Spain or Mexico; that the defendant, The United States — America, contrary to and in violation of the provisions of the Constitution of the United States, and of the treaty of Guadalupe Hidalgo, and of the provisions of the eighth section of the act of Congress entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, etc.," approved July 22, 1854, has sold and otherwise disposed of large tracts of the land so as aforesaid granted to the said Vigil and St. Vrain, but how much of the said land has been as aforesaid sold and otherwise disposed of, and to what person or persons your petitioner has not, and at the present time cannot procure sufficient information whereupon to base an allegation in this its petition.

Your petitioner therefore prays:

1. That the validity of the title to the said grant to the said Cor-

nelio Vigil and Ceran St. Vrain, and the right of your petitioner thereto, may be inquired into by this honorable court.

2. That the said grant or tract of land, with the exception of the said tracts heretofore confirmed and awarded under the provisions of the said acts of Congress of June 21, 1860, and February 25, 1869, and such tracts as may have been sold or otherwise disposed of by the United States, may be confirmed to your petitioner, or to the heirs and legal representatives of the said Cornelio Vigil and Ceran St. Vrain.

3. That, in the event of the said grant being confirmed to your petitioner as aforesaid, an order may be made by this honorable court, directing an inquiry as to how much land of the said grant has been sold or otherwise disposed of by the Government of the United States, and to whom, and the value of the said land, and that the court shall give judgment for your petitioner against the defendant for the full value of the said lands so as aforesaid sold or otherwise disposed of by the said defendant, pursuant to the provisions of the act of Congress constituting this honorable court.

14 4. That your petitioner may have such other and further relief as may be meet and agreeable to equity and good conscience.

And the petitioner will ever pray, etc.

JAMES W. VROOM,
*Solicitor for Petitioners.*

*Translation of the Papers of Grant.*

Most excellent senor governor:

We, Cornelio Vigil, resident of the first demarcation of Taos, and Ceran St. Vrain, naturalized, and a resident of the same demarcation, appear before Your Excellency, asking that we may have the benefit of all the privileges allowed us by law, and we state: That, desiring to promote the agriculture of the country, to the end that it may be seen in a flourishing condition, and finding ourselves with insufficient lands with which to do it, we have seen and examined with all care that which embraces the Rivers Huerfano, Pisipa and Cucharas, as far as their confluence with the Napesta and of the Anima, and finding in it the qualities of agreeableness, fertile lands for abundant cultivation, pastures and waters, and all that which is required for a productive settlement and the raising of large stock and sheep, being satisfied with it all and that it is vacant, we have not hesitated to come to Your Excellency, praying you may be pleased, as an act of justice, to grant us in the said land the possession of a tract of land to each one, protesting that in the coming spring we will make a beginning of settling ourselves thereon until we shall be permanently established, and the colony settled, provided that Your Excellency deign to grant it to us; thus we offer it. We swear not to be of malice.

Santa Fé, December 8, 1843.

CORNELIO VIGIL.
CERAN ST. VRAIN.

SANTA FÉ, *December* 9, 1843.

To the justice of the peace, to whom it belongs, in order that he give the possession to which the petitioners refer, as this government desires that agriculture and the arts be promoted.

ARMIJO.

DONACIANO VIGIL,
*Acting Secretary.*

15 Senor justice of the peace of the third demarcation, Don Miguel Sanchez:

We who sign below, Mexican citizens and residents in this department, appear before you asking that we may have the benefit of all the privileges allowed us by law, and we state: That the vacant land which the accompanying petition designates having been donated to us by the government of the department, as is seen by the superior decree written on the margin, and lacking the title of possession that may assure to us our legal property, and (that) no one may disturb us therein, we pray you may be pleased to treat us as presented, and immediately extend it to us for the exercise of our right.

Wherefore we pray you may be pleased to grant our request as it is justice we ask. We swear not to be of malice and what is necessary, &c.

Taos, December 25, 1843.

CORNELIO VIGIL.
CERAN ST. VRAIN.

DECEMBER 26, 1843.

As presented and admitted in so far as it may be admissible in law, let me the present judge go with the attending and instrumental witnesses to the place which the accompanying documents cite, and let the possession which they cite be given to the petitioners, in order that it may be held with right, by them, and by their heirs and successors.

I, the citizen Miguel Sanchez, justice of the peace of the third demarcation of Taos, thus provide, order and sign with those of attendance. I certify,

JOSE MIGUEL SANCHEZ.

Attending:
JUAN RAMON VALDEZ.
Attending:
PEDRO VALDEZ.

In this district of Taos, on the second day of the month of January, of one thousand, eight hundred and forty-four, I, the citizen Miguel Sanchez, justice of the peace of this demarcation, in virtue of that ordered in the decree which precedes, went to the land to which Don Cornelio Vigil and Don Ceran St. Vrain refer in the foregoing writing, and being on it with the attending and instrumental witnesses who were appointed for the purpose, the designa-

tion of the mounds of the boundaries was proceeded with, as it is described in the hereinbefore-inserted petition, and it corresponds to the map to which I attach my scroll, and beginning on
16 the north line of the possessions of Miranda and Beaubien at one league east of the Animas river a mound was placed; and from there following a straight line as far as the Napesta river one (league) below the confluence of the Animas with the said Napesta, the second mound was placed on the edge of the said Napesta river; and continuing to follow the said Napesta upward, as far as a league and a half below the confluence of the San Carlos river, the third mound was placed; following afterward a straight line toward the south until arriving at the foot of the first mountain, at a distance of two leagues to the west of the Huerfano river, the fourth mound was placed; and following the summit of the said mountain toward the east, until striking the line of the possession of Miranda and Beaubien, the sixth mound was placed; and from there continuing to follow the line of the said possession of Miranda and Beaubien, on the east, I arrived at the first mount that was placed, closing there the boundaries of the present possession, and having explained it to them, I conducted them by the hand and caused earth to be thrown, herbs to be pulled up, and other demonstrations of property, with which the act was concluded, the boundaries being determined, without any claim of injury to a third party having appeared; because I, the said justice, in the name of the sovereignty of the nation (which may God preserve) gave to the said Don Cornelio Vigil and Don Ceran St. Vrain the personal and perfect possession which they solicit, in order that it may serve as a title to them, their children and successors; wherefore I protect and defend them and order that they shall not be dispossessed of it, without having been first heard and vanquished by court and law.

In witness whereof, I signed it with my attending and instrumental witnesses, who were the citizens Luis Lee, Manuel Martinez and Juan Ortega, who were present and residents of this district to which I certify.

JOSE MIGUEL SANCHEZ.

Instrumental:
LUIS LEE.
Instrumental:
MANUEL ANTO. MARTINEZ.
Instrumental:
JUAN ORTEGA.
Attending:
JUAN RAMON VALDEZ.
Attending:
PEDRO VALDEZ.

Fees, 30 dollars.

17 Sello Cuarto: Dos Reales Años de mil ochoientos cuarenta y dos, y mil ochocientos cuarento y tres.

Cemo Sr Gobr:

Cornelio Vigil viemo de la 1ª demarcacion de Taos y Seran St. Vrain cuido. naturalisado y vecino de la misma ante V. E. en la via y forma que mejor halla lugar en die y al muestro conbenga parecemos y decimos que deciando fomentarlo agricultura del pais en terminos que se vea en errado florecienos y encontrandonos con terrenos reducidos en que verificarlo hemos visto y reconocido con toda detencion el que comprende los Rio del Huerfano, Pisipa, y Cucharas, hasta en confluencia con el Napesta y de los Animas y encontrando en el las cualides de amenidad tierras perases para el cultivo abundante pastos y aguas, y todo lo que se requiera para un establecicionto prutuoro y crias de ganado mayor y lanar satisfechos de todo y de que era valdio no hemos vacilado para occurrir á V. E. suplicandote a sirva por un efecto de justicia concedemos en el referido terreno la posecion de un citio de tierras á cada uno protestando que en la primavera inmediara daremos principiar á establecimos en ella hasta quedar redicados y establecida la colonia siempre que V. E. se digne conseder norlo, ase lo afrenos y juramos no ser de malicia.

SANTA FÉ, *Dbre.* 9, 1843.

M pres a para que corresponde para que de la posecion a que se repiesen los presentantes, ruis esta Gobr decea que se fomente la agricultura y las artes.

(Signed)
ARMIJO.
(Signed)
CONACIONO VIGIL.

18 Santa Fé, Dbre. 8 de 1843.

(Signed) CORNELIUS VIGIL y SERAN ST. VRAIN.

Sr. Jues de par de la 3d demarcacion:

D. Miguel Sanche's Losge subscriben ciudadanos Mejicanos y residentes en este Departmento ante U. en la mejor forma qe haya lugar en derecho parecemos y decimos: qe habiendosenos donado por el Gob° del departam to el terreno Valdio que demarca la adjunta instancia, como se ve por el superior decreto scritado al margen, y careciendo del titulo de posecion qe nos asegure n tra legal propriedad y ninguno pueda turbarnos en ella, suplicamos á V se sirva habernos por presentados, y desdé luego ampliarnos esta para los usos de n tro dro.

A. e. Portanto, pedimos se sirva acceder á n tra solicitad pr ser justicia ya impetramos, juramos no ser de malicia y lo necesario eti.

Taos, Deciebre 25 de 1843.

(Signed) CORNELIO VIGIL.
SERAN ST. VRAIN.

DECIEMBRE 26 DE 1843.

Por presentado y admitido en cuanto haya lugar en dro pasese por mi el presente jues con los de asistencia é instrum les al
19 lugar qe citan los documentos ad juntos, y dese á los petentes la posesion que solicitan para qe pr se y pr sus herederos y socesores sea habido con dro. El ciudadano Miguel Sanchas jues de paz de la 3d demarcacion de Taos, asi lo proveyo mando y firmo con los de asa. doy fée.

(Signed) JOSE MIGUEL SANCHES.

Ass'a:

(Signed) JUAN VALDEZ.
PEDRO VALDEZ.

En este partido de Taos á los dos dias del mesde Enerode milocho ciéntos cuarento y cuatro, y le Miguel Sanches. Jues de paz de esta demarcacion, en virtud delo mandado en el decreto qe antecede, pasa al terreno qe refieren D. Cornelio Vigil y D. Ceran St. Vrain en al antecedente escrito, y estando en el con los de mi asis *a* é instrum les qe al fin se nombraron, se procedio á señálar las mohoneras de los milites conforme se describe en la preincerta peticion, y corresponde al mapa qe rubrico; y empesando por la linea (del norte de la posesion de Miranda y Beaubien) à una legua al este del Rio de las animas se puso una mohonera, y de hay siguiendo una linea recta hastá el Rio de Napeste una abajó de la confluencia de las animas con el mismo Napeste, se puso la 2ª mohanera en la orilla del dh° Rio de Napeste, y continuando á sequir el mismo Napeste para arrivá hasto una legua y media abajó de la confluencia del Rio Sn Carlos, se puso la 3ª mohonera, siguiendo despues
20 una linea recta para el sür hastá legar al pie de la primer cierra á dos leguas de distancia al oueste del rio huerfan (o) se puso la 4ª mohonera, y continuando en linea (rec)ta hastá arrivá de la cierra dondé nace el citado ha(erfa)no, se puso la 5ª mohonera, y seguiendo la cum(ulacion) dha cierra para el Este hasta encontrar la linia de posesion de Miranda y Beaubien, se puso la 6ª mohonera, y de hay continuando á seguie la linea de los limites de la misma posesion de Miranda y Beaubien, por el este, Megue á la primera mohonera qe se puso cerrando hay los linderos de la presente posesion; y registrado los pasce de la mano é hise tirar tierra, arrancar yerbas yotras demostraciones de propiedad, con la qe, seconduyo elacto quedando determinados los linderos, sin qe hubiese aparecido reclamo alguno de perjuicio de tercero; por qe yo el referido jues, á rombre de la soberania de la nacion (g. D. G.) les didos mencianados D. Cornelio Vigil y Ceran Sn Vrain la posesion personal y perfecta que solicitan parage les sirva de titulo á ellos sus hijos y sucesores, pore la cualles dur paro y defiendo, y mando qe de ella no sean despojados sin les primero aid'os y por duero y derecho vencidod, en fée de la cual lo firmé con los de miasistencia

derechos 30 pesos.

y los instrumentles que la fueron los c. c. Luis Lee, Manuel Martin, y Juan Ortega presentes y vecinos de este partido, de qe

21 doy fés.

(Signed) JOSE MIGUEL SANCHES.

Instrum'l:
(Signed) LUIS LEE.
Instrum'l:
(Signed) MANUEL ANTO. MARTINEZ.
Instrum'l:
(Signed) JUAN ORTEGA.
Ass'a:
(Signed) JUAN RAMON VALDEZ.
Ass'a:
(Signed) PEDRO VALDEZ.

I hereby certify that the foregoing is a correct copy of the original Vigil and St. Vrain grant papers on file in my office, excepting the portions of words inserted between accolades on the 4th page of this copy, which are missing in the original on account of worn-out edges of the original papers.

Surveyor general's office, Denver, Colo., Febr. 7th, 1893.

E. C. HUMPHREY,
*Surveyor General for Colorado.*

(Here follow maps marked pp. 22 & 23.)

24 And be it further remembered that, to wit, on the 21st day of April, A. D. 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

25 *Summons.*

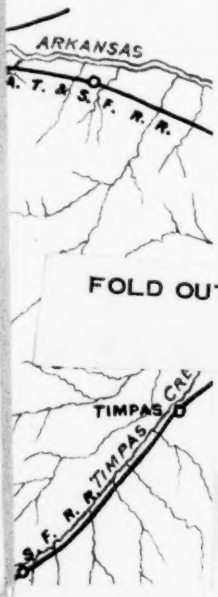
UNITED STATES OF AMERICA, } ss:
*District of New Mexico,* }

In the U. S. Court of Private Land Claims.

THE LAS ANIMAS LAND GRANT Company, Plaintiff, *versus* THE UNITED STATES OF AMERICA, Defendant. } Petition Filed in the Clerk's Office This 2d Day of March, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, attorney for the United States before the court of private land claims, Greeting:

You and each of you are hereby notified that an action has been brought in said court by The Las Animas Land Grant Co., plaintiff, against you, as defendant, under the provisions of the act of the




FOLD OUT IS TOO LARGE TO BE FILMED

Congress of the United States entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at [SEAL.] the city of Santa Fé, in said district, this 24 day of March, A. D. 1893, and of the Independence of the United States the — year.

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES,
*Deputy Clerk.*

26 [Endorsed:] Gen. No. 154. U. S. court of private land claims, district of New Mexico. The Las Animas Land Grant Co., plaintiff, *versus* —— ——, defendant. Summons. Filed this 21st day of April, A. D. 1899. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk.

*Proof of Service.*

UNITED STATES OF AMERICA, } ss:
*District of New Mexico,* }

APRIL 1ST, A. D. 1893.

I hereby certify that I received the within writ on the 1st day of April, A. D. 1893, and that I have personally served the same upon the said defendant, U. S.

Served on me this the 1 day of April, 1893.

MATT. G. REYNOLDS,
*U. S. Attorney.*

This writ therefore returned April 21st, as the law directs, this 24st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
*Deputy Marshal.*

*Marshal's Fees.*

Service — defendants, at $2..... .....
Mileage, — miles at 6c. going only .....
1 summons..... .... ..... .... ..... $4.00

Total..... ..... .....

Paid by —— ——.

3—304

27 And be it further remembered that thereafter, to wit, on the 2nd day of February, A. D. 1894, a motion was filed in the office of the clerk; which said motion is in the words and figures following, to wit:

28 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé, N. M.

LAS ANIMAS LAND GRANT COMPANY, Plaintiff,
*vs.*
THE UNITED STATES, Defendant. } No. 154.

Comes now the United States, by its attorney, and informs the court that there are now pending in this court four separate suits for the confirmation of what is commonly known and called the Las Animas grant, known also as private land claim No. 17, as reported to Congress. The said suits are as follows:

No. 128, Thomas J. Allen *et al. vs.* The United States.
No. 135, George W. Thompson *et al. vs.* The United States.
No. 154, Las Animas Land Grant Company *vs.* The United States.
No. 216, Louise J. Purdy *et al. vs.* The United States.

That each of said suits are for the confirmation of the same grant title, each claiming a derivative interest therein from the original grantees.

That as against the United States their interests are common and the same.

Wherefore the United States moves the court for an order consolidating all of said suits as one suit, and thereafter proceed in the names of all of said plaintiffs and as "Consolidated case No. 128, 135, 154, and 216," and that the United States shall be required to answer to one petition, to wit, the petition filed in No. 154, Las Ani-
29 mas — Grant Company *vs.* The United States, and that said answer may be taken as answer to all of said claims.

MATT. G. REYNOLDS,
*U. S. Attorney.*

Endorsement: Las Animas Land Grant Company *vs.* United States. Las Animas grant. Filed in the office of the clerk, court of private land claims, Jan. 20, 1894. James H. Reeder, clerk, by I. L. Chaves, deputy.

30 And be it further remembered that thereafter, to wit, on the 23d day of July, A. D. 1894, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

31 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District.

| | | |
|---|---|---|
| THE LAS ANIMAS LAND GRANT COMPANY, | No. 154, | Consolidated. Nos. 44, 128, 135, 154, and 216. Vigil and St. Vrain or Las Animas Grant, P. L. C. No. 17. |
| and JAMES CORRIGAN, | No. 44, | |
| and T. J. ALLEN, | No. 128, | |
| and GEORGE W. THOMPSON, | No. 135, | |
| and LOUISE J. PURDY ET AL., Consolidated as Plaintiffs, | No. 216, | |
| *vs.* THE UNITED STATES, Defendant. | | |

*Answer.*

Comes the United States now and at all times reserving all manner of benefit and advantage to itself of exception to the many errors and insufficiencies in the petitions in the said consolidated case filed by the respective plaintiffs, and to each and all of the same, but more particularly that of the Las Animas Land Grant Company, No. 154, or as much thereof as it is advised are
32 material to make answer unto, answers and says:

I.

That it has no knowledge or information sufficient to enable it to form a belief as to whether on December 8, 1843, Cornelio Vigil and Ceran St. Vrain were residents of the then department of New Mexico, and petitioned Governor Manuel Armijo to grant them all the land in the said department, which embraces the Rivers Huerfano, Pisipa, and Cucharas, so far as their confluence with the Napesta and with the Animas, nor as to whether the same was accompanied by a deseño or map, nor as to whether on December 9, 1843, said governor conceded the said petition and directed the justice of the peace, to whom it belonged, to give the possession to which the petitioners refer, nor as to whether on December 25, 1843, the said Vigil and St. Vrain applied to said justice of the peace for the proper possession of the said tract of land, nor as to whether on January 2, 1844, the citizen Miguel Sanches, justice of the peace, placed the said Cornelio Vigil and Ceran St. Vrain in full possession of the said tract of land as aforesaid or not, nor as to whether he executed to them his proper and lawful act of juridical possession as alleged in the petition, but it says that if said petition, concession, and act of possession were executed as alleged in the first paragraph the same was without authority of law and void; that the governor had no lawful authority to make said grant or concession nor to authorize the same to be severed from the public domain

by placing or having placed the said grantees in the lawful possession of a portion thereof; that the said alleged grant and
33 possession for that reason are null and void.

II.

It denies that said Vigil and St. Vrain were ever placed in the lawful possession of said tract of land or any part thereof, or that they or their grantees remained in possession of said property up to the time of the cession of the country to the United States.

III.

It says it believes it is true that on March 7, 1844, the said Vigil and St. Vrain attempted to convey an undivided one-sixth interest in said property to one Eugene Leitensdorfer; that upon the same day they attempted to convey to Manuel Armijo an undivided one-sixth interest in said property, and that upon said day they attempted to convey to Donaciano Vigil an undivided one-sixth interest in said property, and that on the 11th of March, 1844, they attempted to convey to Charles Bent an undivided one-sixth interest in said property, leaving Vigil and St. Vrain two-sixths interest in said property.

The defendant says that at the date of said alleged grant and at the date of said conveyances, as aforesaid, and until the change of sovereignty from Mexico to the United States, the said above-mentioned Manuel Armijo was the governor of the said department and was the same person who pretended to make said alleged grant only two months before, and that said conveyance to him was in consideration of and the carrying out of an arrangement and understanding between said Manuel Armijo and the said Vigil and
34 St. Vrain, said Leitensdorfer, said Charles Bent, and said Donaciano Vigil to unlawfully acquire a large portion of the public domain of Mexico in violation of law and in fraud of said government and to cloud the title thereto, and that the making of said deeds was the carrying out of the unlawful purpose aforesaid; that said Armijo well knew that he had no power or authority to make such a grant or any grant at all; that after the adoption of the Federal constitution of 1836 and the bases organic (Tacubaya) no power existed in the governors of the territories to dispose of the public lands.

That said Don-ciano Vigil, at the date of said grant, was the acting secretary of the department of New Mexico and attested and admitted the grant by Manuel Armijo in that capacity; that he was a party to the defrauding his government, and that he knowingly and unlawfully attested the fraudulent act of the governor and received without consideration thereafter a deed to one-sixth in about four millions acres of said land.

That the said Leitensdorfer and Bent were men of prominence in the department and at the time were warm personal friends of the governor and of Vigil and St. Vrain, and were parties to and knowingly and willingly received the benefit without consideration of

said fraud, by reason of all of which the said grant is fraudulent, null, and void.

IV.

It denies that at the date of the treaty of Guadalupe Hidalgo the said Vigil and St. Vrain, their heirs and assigns, were lawful owners of the Las Animas grant, or that they became possessed, under the provisions of the treaty, Constitution of the United States or its laws, or any attempted conveyance to them, of a fee-
35 simple title or any title whatever to any interest in said property, either legal or equitable.

It denies that the said Vigil and St. Vrain, their heirs and assigns, have remained in possession, as owners in fee-simple or otherwise, from the date of said grant to the present time, and it denies that Vigil and St. Vrain, their heirs, assigns, or legal representatives, have any interest in any portion of said property except as may have been acquired by an act of confirmation passed by Congress in confirming 22 leagues, as will more fully hereafter appear.

It denies that Vigil and St. Vrain, Leitensdorfer, Armijo, Bent, and Donaciano Vigil obtained any interest in said property in good faith, but, on the contrary, avers that the same was obtained by fraud, as before alleged, and in anticipation of the change of sovereignty to the United States, and that those claiming under them at the present time and these plaintiffs do not hold the same for valuable consideration without notice.

And it is averred on behalf of the United States that the interests of the present plaintiffs and those holding in common with them are and can be of no more force and effect against the United States than the said claim would have been were it being asserted against the Mexican government by Vigil and St. Vrain in person.

V.

As to whether or not said grant is situate in the counties of Pueblo, Huerfano, Otero, Bent, and Las Animas, in the State of Colo-
36 rado, it has no knowledge or information sufficient to enable it to form a belief, nor does it know whether or not the boundaries as designated in the 5th paragraph of the said petition are correctly set forth or not.

It is informed and believes that a preliminary survey of said claim was made by the surveyor general of Colorado, but whether the same correctly locates said claim, it has no knowledge or information sufficient to enable it to form a belief. It says it is informed and believes that the claim originally asserted is about three and a half million acres.

VI.

It says it believes it to be true that on June 4, 1857, the owners of said alleged grant filed a petition before the surveyor general of the Territory of New Mexico under the provisions of an act dated July 22, 1854, entitled "An act to establish the office of surveyor general of New Mexico, Kansas, &c.," and under the provisions of

said act and the instructions of the Interior Department promulgated thereunder the surveyor general for said Territory, on September 17, 1857, upon the said petition, recommended said grant for confirmation to its fullest extent, and the said report, together with transcript of all proceedings thereof, was duly transmitted to the Congress of the United States for its action in the premises, as provided by law.

VII.

It says that it believes it to be true that the President on June 21, 1860, duly approved an act entitled An act to confirm certain private land claims in the Territory of New Mexico (12 Stats., 71).
37 That a portion of said act which has application and reference to this claim is correctly set forth in the 7th paragraph of said petition.

But further answering upon this point, defendant says that the bill which was duly enacted into said law, which was House bill No. 195, Mr. Benjamin, from the Committee on Private Land Claims, submitted a report thereon; that a portion of said report relating to this claim, which was known as private land claim # 17, is as follows:

36TH CONGRESS, 1st Session. } SENATE. { Rep. Com. No. 228.

In the Senate of the United States.

May 19, 1860.—Ordered to be printed.

Mr. Benjamin made the following report:

(To accompany bill H. R. 195.)

The Committee on Private Land Claims, to whom were referred House bill No. 195 and various reports of the surveyor general of the Territory of New Mexico in relation to private land claims in said Territory, have the honor to report:

That after examination of the various claims mentioned in the letter of said surveyor general to the Commissioner of the General Land Office, dated the 12th January, 1858, they concur in the recommendation of the said officer that the said claims should be confirmed, with two exceptions, which they now proceed to notice:

The second exception made by your committee is in relation to claim No. 17, which the surveyor general recommends in favor of Cornelio Vigil and Ceran St. Vrain for the full extent embraced in a survey annexed to the papers. The quantity of land
38 embraced in this survey does not appear; but by a close examination of some of the distances shown and a rough calculation of the others, there cannot well be less than one hundred square leagues, and possibly much more. Now, a reference to the petition and grant shows that the claimants, on the 8th December, 1843, petitioned Governor Armijo, stating that they had "examined the land embraced within the Huerfano, Piripa, and Cucharas

rivers to their junction with the Arkansas and Aminas rivers, and, finding sufficient fertile land for cultivation, an abundance of pasture and water, &c., they pray you to grant each one of us a tract of land in the above-mentioned locality, protesting that in the coming spring we will commence operations which will be continued until the colony shall be established and settled," &c.

On the 9th December, 1843, the governor referred this petition "to the justice of the peace of the proper jurisdiction, who will give the possession referred to by the petitioners, as this government desires to encourage agriculture and the arts."

On the 25th December, 1843, the two claimants presented a petition to the justice of the peace, setting forth that the governor had granted them "the public land contained in the accompanying petition," and asking the execution of his order.

Under these petitions and orders the two claimants were placed by the justice of the peace on the 2nd January, 1844, in possession; not each "of a tract of land in the above-mentioned locality," but were jointly put in possession of the whole district of country, including the lands on both banks of three tributaries of the Napeste or Arkansas river, from their mouths nearly to their sources, and without the slightest apparent warrant in the governor's order for so exorbitant a grant.

39 If this demarkation of boundaries by the justice of the peace had been afterwards brought to the notice of the governor and approved by him a grave question would still remain as to his power to concede entire districts of country without the authorization of the provincial assembly of the Mexican congress, but your committee find no proof in the paper of approval of this action by any officer superior to the justice of the peace, and as his power clearly could not go beyond the execution of the governor's orders, your committee cannot concur in the recommendation of the surveyor general that this grant be confirmed for the full extent claimed. It is, however, plain that these parties are entitled to have their title confirmed to some extent, and this involves the inquiry as to the true meaning of the words "a tract of land" claimed in the original petition.

Under the Mexican colonization law of 1824 and the regulations of 1828, the extreme quantity allowed to be granted by the governor to any colonist was eleven square leagues. In the absence of any other guide your committee suggest that a restriction of the confirmation to an extent of eleven square leagues for each claimant would be the utmost they could fairly expect, and would be not only a fair but a liberal compliance with the obligation imposed on the good faith of the United States under the terms of the treaty of Guadalupe Hidalgo.

In relation to the proper location of these tracts a difficulty would arise resulting from the fact, ascertained by your committee, that a certain number of settlers, represented to be forty or fifty, have settled on tracts of land conceded to them by the above-men-

40 tioned grantees in different parts of the tract set apart for them by the justice of the peace, so that if the two tracts of

eleven leagues each were located in any part of the district of country referred to the location would necessarily exclude some of these settlers, who have gone onto the land in good faith and ought not to be disturbed. This difficulty can only be avoided by surveying the tracts of these actual settlers, wherever found within the district, and deducting their area from the area of the two eleven-league tracts, leaving the remainder only of these two tracts to be located in one body. To this mode of location the claimants, who were represented before your committee by Judge Watts, as their counsel, and one of whom, Ceran St. Vrain, was present in person, have given their consent, and the committee has made therefore proper provision in the bill.

And it is therefore alleged on behalf of defendant that the claims were represented before said committee by Judge Watts, attorney for claimants, and Ceran St. Vrain, for himself, and thereafter and upon said recommendation and consent of said Watts, as counsel for all the owners, and said St. Vrain, for himself, the act of June 21, 1860, was duly passed and approved by the President.

VIII.

Answering the allegation in the eighth paragraph of the petition contained, it says that the action of Congress, as alleged therein to have been taken, was a final action of Congress upon the extent to which it would recognize the rights of Vigil and St. Vrain and those claiming under them in and to said alleged grant under said treaty by designating the amount of land which the United States Government would or did confirm to Vigil and St. Vrain and those claiming under them, and thereby and by force thereof
41 rejected the claims of said Vigil and St. Vrain to any additional lands over and above 22 leagues, all of which fully appears by the act of June 21, 1860, before referred to.

IX.

Answering the allegation of the 9th paragraph of said petition, it is true that Congress, on February 25, 1869, passed another and further act entitled "An act to amend an act entitled An act to confirm certain private land claims in the Territory of New Mexico" (15 Stats., 275); which said mentioned act was explanatory of and in execution of the action taken by Congress under the act of June 21, 1860, before referred to, and that the substence of said act, with the exception of sec. 3, 4, and 5 thereof, *are* correctly stated, which is to be found in U. S. Stats. at Large, vol. 15, pp. 275–'6, and to which this defendant desires particularly to refer, and that upon this bill so enacted into law Senator Ferry, for the committee, made the following report:

40TH CONGRESS, 3rd Session. SENATE. Rep. Com. No. 198.

In the Senate of the United States.

February 1, 1869.

Mr. Ferry made the following report:

(To accompany bill H. R. No. 1345.)

The Committee on Private Land Claims, to whom was referred House bill No. 1345, entitled "An act to amend an act entitled 'An act to confirm certain private land claims in the Territory of New Mexico,'" beg leave to report:

Ceran St. Vrain and the heirs of Cornelius Vigil claimed under a Spanish grant, the title to a large tract of land in the southern portion of Colorado. The tract claimed embraces two entire
42 counties and portions of two other counties, there being now residing on the tract included in the claim of said parties over 1,000 voters of the Territory of Colorado, who are settlers upon said lands, and many of them have made valuable improvements upon said lands and claim them under the hom-stead and pre emption laws of the United States. The cases of litigation have ensued, and acts of personal conflict by reason of the conflict of claims upon said lands.

By act of Congress of June 21, 1860, the claims of said Ceran St. Vrain and the heirs of Cornelius Vigil were confirmed to the extent of 11 leagues each, Congress refusing to confirm them to any greater extent, the amount of such confirmation being but a small proportion of the entire land claimed; but the claims so confirmed have never yet been located or surveyed, and their location is yet uncertain, and the parties have the right to locate them any place within the limits of their entire claim. By the terms of that act, provision was not made to compel a location of said claim.

The settlers upon said lands demand that the claimants should locate their claims, and this demand upon the part of the settlers is, in the opinion of your committee, just, and its justice has been urged upon our attention by the delegate from Colorado, and we fully agree with him that the interests of his constituents who have settled upon said lands and the interests of the Territory require that the limits and boundaries of said claims should be settled.

The object and purpose of this bill is to provide for the immediate survey of the said claims and their location, and to
43 quiet the title to the lands within the limits of the same.

Your committee therefore recommend the passage of the bill.

X.

As to whether or not the allegations in the 10th paragraph of said petition in relation to the awards of tracts of lands to persons holding titles under promises to settle, &c., previously made by the

original grantees, are correctly stated, it has no positive knowledge, but believes the same to be substantially true.

It has no knowledge or information sufficient to enable it to form a belief as to what the quantity of land, if any, in addition to the 22 leagues was held by persons under Vigil and St. Vrain, and avers that the same is immaterial and irrelevant, as all of the same were claimants under contracts made subsequent to the treaty.

XI.

It says the allegation in the 11th paragraph of said petition that the said St. Vrain and the heirs of Vigil nor any grantees of them or any of them never applied for a confirmation of said tract of land known as the Las Animas grant is untrue and contrary to the allegation contained in the 6th paragraph of said petition; but, on the contrary, it says the same was prosecuted through the surveyor general's office by them and their lawful attorneys, and was prosecuted before the committees of Congress of the United States by their attorney, John Watts, and C. St. Vrain in person.

Further answering, it says as to whether or not the provisions of the acts of Congress of June 21, 1860, and February 25, 1869, before referred to, were ever accepted or not, it has no knowledge
44 or information sufficient to enable it to form a belief; but if such allegation be true, all rights on behalf of Ceran St. Vrain and Vigil under said grant and those claiming under them have been forfeited, and the right to prosecute this claim in this court on behalf of these petitioners is specifically denied and prohibited under the provisions of section 5, the act of February 25, 1869, in the following terms:

"And be it further enacted, That in case of the neglect or refusal of the said Vigil and St. Vrain, or either of them, to accept of the provisions of this act, and the act to which this is amendatory, and to locate their said claims, as provided therein, no suit shall be brought or proceedings instituted in any of the courts of the United States, by such party or by any one claiming through or under them, to establish or enforce said claims, or for any cause of action founded upon the same, after six months from the passage of this act."

The defendant therefore pleads under the allegations in said paragraph of said petition that the plaintiffs should not be permitted to have and maintain their said action in this court for the establishment of their claim to said alleged property or any part thereof.

XII.

Further answering as to paragraph 12, it says: Under the laws, customs, and regulations of the Republic of Mexico no grant of land could lawfully be made for the purpose of colonization and agriculture by the governors of the territories, departments, nor by the various States of the Republic, to empresario-, to families
45 and individuals, for the reason that no law, rule, or regulation existed therefor, and that there existed at that time no

Territories nor States, but all the various subdivisions were departments under the constitution of 1836; that upon the adoption of the constitution in 1836 and the laws promulgated thereunder, as well as under the bases organica (Tacubaya), no power or authority was vested in the governor to dispose of the public lands in any manner to any person, but, on the contrary, the constitution of 1836 defined the powers and duties of the governors of the various departments and provided that such powers as defined therein were to be the only powers and duties that they might exercise.

That under the constitution of 1836 and the laws passed thereunder, the act of August 18, 1824, and particularly the regulations of November 21, 1828, were repealed and the policy of the government for disposal of the public lands so defined by law as to render it inconsistent with the pretended exercise of powers such as claimed in said petition and such as were claimed to have been exercised by Armijo.

That even if said grant were an empresario grant, and even if the law of August 18, 1824, and the regulations of November 21, 1828, were in force, still no definitively valid grant could be made to empresarios for the colonization of families until the supreme government shall have approved the same upon a report from the territorial deputation.

It is alleged that no such attempted approval was ever obtained, and that whatever rights may have been acquired under the same as an empresario grant, they were only inchoate and incomplete, subject to revocation by the Mexican government, and
46 therefore subject to revocation by the United States in whole or in part, which it did by the acts of 1860 and 1869, and therefore is not one which under the laws of nations, treaty of sessions, law and ordinances of Mexico, principals of equity, and the act creating this court, it is bound to respect.

As to the other matters and things alleged in said paragraph of said petition, it denies.

XIII.

For answer to the allegations contained in paragraph 13 of said petition it says it denies that Congress of the United States by the act of June 21, 1860, and February 25, 1869, or any other act recognized the same as an empresario grant to the said Cornelio Vigil and Ceran St. Vrain, or that it thereby declared that the said claim asserted by said Vigil and St. Vrain was valid under the laws of Mexico and entitled to recognition in the manner and form as claimed by the petitioners.

That the confirmation of 22 leagues was a gratuity without full knowledge on the part of Congress of the frauds that had been committed by the said grantees and the said Armijo, Vigil, Leitensdorfer, and Bent upon the Mexican government.

That the patenting of various portions of said land to derivative claimants to the extent of 22 leagues by the United States was only recognizing the obligation assumed by Vigil and St. Vrain in conveying all their interests in said 22 leagues, which was the quantity

this Government was willing under the treaty to recognize, and
— which said derivative claimants had acquired their interests and
claims from Vigil and St. Vrain subsequent to the treaty of
47 Guadalupe Hidalgo, and not as colonists under the laws of
Mexico. The patenting of said land so as aforesaid and the declining to further recognize said claim operated as a rejection as to the balance, and therefore said claim is one which has hitherto been lawfully acted upon and decided by Congress, and the questions involved as well as the right to the whole of said property is *res a-judicata*, and under the provisions of the 4th subdivision of sec. 13 of an act approved March 3, 1891, entitled "An act to establish the court of private land claims, and to provide for settlement of private land claims in certain States and Territories," is prohibited from confirmation by this court.

XIV.

For answer to the allegations contained in the 14th paragraph of said petition, it says it has no knowledge or information sufficient to enable it to form a belief as to whether the facts therein contained as to the conveyances by the heir of Manuel Armijo to Cassandra E. Baird of an undivided one-sixth interest in said property are true or not, nor as to whether or not said land so alleged to have been conveyed to said Cassandra E. Baird was by process of confiscation conveyed to said Vigil and St. Vrain, but it denies that said St. Vrain entered into possession of said undivided interest lawfully or otherwise. As to other matters and things contained in said paragraph relating to said alleged interest or the various mesne conveyances of interest in said grant to various parties alleged therein, it has no knowledge or information sufficient to enable it to form a belief, and therefore calls for strict proof.

48 XV.

Answering the 15th paragraph of said petition, it says that said St. Vrain was never seized of a large undivided interest in fee-simple in said grant or otherwise; that as to whether or not, on the 12th day of June, 1867, he did pretend to lease a portion of said grant to the United States Government for the period of fifteen years at an annual rental of one dollar ($1.00), and that the United States did enter into possession of said tract and established thereon what is designated as New Fort Lyon, it has no knowledge or information sufficient to enable it to form a belief, but if the same be true it is immaterial and irrelevant in this case for the reason that the officers who may have pretended to lease on behalf of the United States had no authority in law or otherwise to admit, confess, or adjudicate the validity, dignity, or question of the title which it is now alleged said Vigil and St. Vrain acquired from the Republic of Mexico.

Further answering said paragraph, it says it has no knowledge or information sufficient to enable it to form a belief as to whether upon said date said St. Vrain, by indenture of lease, devised and leased to the Government of the United States a certain other tract

of land, being a part of said grant and lying within the exterior limits of the same, for the period of fifteen years, at an annual rental of one dollar ($1.00) per annum, nor as to whether the United States did enter upon and take possession of said tract and erect a Government post upon the same, but if the same be true it is immaterial and irrelevant in this case for the reason that the officers of the Government of the United States who may have entered into said
49 lease had no authority in law or otherwise to admit, confess or adjudicate the validity, dignity, or question of title which it is now alleged Vigil and St. Vrain acquired from the Republic of Mexico.

XVI.

For answer to paragraph 16 contained in said petition, it says that the United States ought not and is not estopped by reason of the alleged confiscation proceedings against Cassandra E. Baird in the State of Colorado as to any interest which he may have had in and to said grant for the reason that at the date of the confiscation proceedings the United States Government, by the act of Congress dated June 21, 1860, had confirmed 22 leagues by grant *de novo* to Vigil and St. Vrain or those who might lawfully deraign title under them, and that the same had not been at that time duly located within the outboundaries of said alleged claim of three and a half million acres of land, and, further, said proceedings in no way confesses the dignity nor extent of the same.

Further answering, it says that said alleged confiscation proceedings in no event worked an estoppel against the United States, for the reason that said court had no jurisdiction to pass upon the question as to the rights of said Baird or those under him, who claimed under the treaty of Guadalupe Hidalgo, and that at said time said question had been finally decided except as to the extent of 22 leagues against his grantors, and said Baird was conclusively bound thereby.

Wherefore, and by reason of the provisions of section 5 of an act entitled An act to amend an act entitled "An act to confirm certain private land claims in the Territory of New Mexico," approved February 25, 1869—
50 Said plaintiffs are prohibited from having or maintaining said suit in this court.

Wherefore, and by reason of the provisions an of act entitled "An act to confirm certain private land claims in the Territory of New Mexico," approved June 21, 1860; also under the provisions of the aforementioned act of February 25, 1869, said claim is one the right to which has hitherto been lawfully acted upon and decided by Congress, and this court ought not to have or maintain jurisdiction over the same.

By reason of all of which the defendant says said claim is not one which, according to the law of nations, the stipulations of the treaty, nor the laws and ordinances of the Republic of Mexico, this Government ought or should recognize, and it asks that said claim be rejected and that the petitions be dismissed.

—— —— *U. S. Attorney.*

51 And be it further remembered that thereafter, to wit, on the 9th day of April, A. D. 1894, the same being a day of the regular April term, 1894, holden at the city of Santa Fé, Territory of New Mexico, the following, among other, proceedings were had, to wit:

| | | |
|---|---|---|
| THOMAS J. ALLEN ET AL., Plaintiffs, vs. THE UNITED STATES, Defendant. | No. 128. | The Las Animas Grant. |
| GEO. W. THOMPSON ET AL., Plaintiffs, vs. THE UNITED STATES, Defendant. | No. 135. | Vigil and St. Vrain or Las Animas Grant. |
| LAS ANIMAS LAND GRANT CO., Plaintiffs, vs. THE UNITED STATES, Defendant. | No. 154. | Las Animas Land Grant. |
| LOU-SE J. PURDY ET AL. vs. THE UNITED STATES, Defendant. | No. 216. | Las Animas Grant. |

The above-entitled causes coming on to be heard, Frank Titus, Esq., solicitor for claimant in cause No. 128, A. W. Waymire, solicitors for claimants in case No. 135, J. W. Vroom, for claimants in case No. 154, Jas. J. Purdy, for claimants in case No. 216, Matt. G. Reynolds, Esq., U. S. attorney, representing the defendant in the above four causes, and it appearing to the court that the subject-matter in the above causes is substantially the same, and *that* the cases consolidated and heard together as one cause by agreement in open court and consent of all parties, it is ordered now here by the court that the said causes be, and the same are hereby, joined and consolidated, and the same shall thereafter be as one cause under the title of James Corrigan *vs.* The United States, being No. 44 *in* the docket of this court, and that the said plaintiffs in causes Nos. 128, 135, 154, and 216, and the persons whom they represent shall be considered and treated as if they had been original petitioners under said cause No. 44.

52 And be it further remembered that thereafter, to wit, on the 31st day of August, A. D. 1894, the same being a day of the regular August term, 1894, holden at the city of Santa Fé, Territory of New Mexico, the following, among other, proceedings were had, to wit:

LAS ANIMAS LAND GRANT COMPANY
vs.
THE UNITED STATES.

The above-entitled cause heretofore consolidated with Nos. 128, 135, 154, and 216, under number 44, upon motion of J. W. Vroom, Esq., attorney for plaintiffs, the cause was continued and the order setting the said cause for trial is hereby vacated.

53 And be it further remembered that thereafter, to wit, on the 27th day of September, A. D. 1898, the same being the first day of the September term of the court of private land claims, holden at the city of Santa Fé, Territory of New Mexico, the following, among other, proceedings were had, to wit:

| | |
|---|---|
| JAMES CORRIGAN vs. UNITED STATES. | No. 44. Vigil and St. Vrain Grant. |
| THOMAS J. ALLEN ET AL. vs. UNITED STATES. | The Las Animas Grant. |
| GEO. W. THOMPSON ET AL. vs. UNITED STATES. | No. 135. Vigil and St. Vrain or Las Animas Grant. |
| LAS ANIMAS LAND GRANT CO. vs. UNITED STATES. | No. 154. Las Animas Land Grant. |
| LOUIS J. PURDY ET AL. vs. UNITED STATES. | No. 216. Las Animas Grant. |

Comes now Mr. Matt. G. Reynolds, U. S. attorney, and announces to the court that the above-entitled consolidated causes had been set for trial for the first day of the present term, and the parties in interest had been notified to that effect. No appearance was made by the plaintiffs, and the court took the matter under advisement.

54 And be it further remembered that thereafter, to wit on the 5th day of October, A. D. 1898, the same being a day of the regular August term, 1894, holden at the city of Santa Fé, Territory of New Mexico, the following, among other, proceedings were had, to wit:

| | |
|---|---|
| THE LAS ANIMAS LAND GRANT COMPANY and Others vs. UNITED STATES. | Nos. 44, 135, 128, and 216, Consolidated. |

These causes coming on now for hearing, and it appearing from the allegations of the several petitioners herein that this court does not have jurisdiction of the subject-matter of the several actions, for the reason that the right to the land claimed in said suits has hitherto been lawfully acted upon and decided by Congress—

It is ordered and decreed by the court that said causes be, and the same are hereby, dismissed.

This October 5th, 1898.

JOSEPH R. REED,
*Chief Justice.*

55 And be it further remembered that thereafter, to wit, on the 4th day of April, 1899, a petition for appeal and allowance for appeal were filed in the office of the clerk; which said petition for appeal and allowance are in the words and figures following, to wit:

56 In the Court of Private Land Claims, Santa Fé District.

Between—

THE LAS ANIMAS LAND GRANT COMPANY and Others, Petitioners,
and
THE UNITED STATES OF AMERICA, Defendant.

The above-named petitioner, The Las Animas Land Grant Company, feeling and considering itself aggrieved by the decree entered October 5, 1898, in the above-entitled cause, whereby the grant heretofore made to Cornelio Vigil and Ceran St. Vrain, commonly called the Las Animas grant, is decreed to have been lawfully acted upon and decided by the Congress of the United States, and the petition herein filed be dismissed, does hereby appeal from said decree to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

JAMES W. VROOM,
*Solicitor for the Petitioner,*
*The Las Animas Land Grant Company.*

And now, to wit, on March 2nd, 1899, upon the petition for an appeal in the above-entitled cause being filed and presented, in open court, the defendant, The United States of America, by Matt. G. Reynolds, Esq., its attorney, being present and appearing thereto, it is ordered that the appeal be, and the same is hereby, allowed as prayed for.

JOSEPH R. REED,
*Chief Justice.*

Endorsement: In the court of private land claims. Between The Las Animas Land Grant Company, petitioner, and The United States, defendants. James W. Vroom, sol. for petitioner. Filed April 4th, 1899. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

57 UNITED STATES OF AMERICA, } ss.:
*Territory of New Mexico,* }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing — pages contain a true and perfect transcript of record entries and proceedings and of all the files in the cause lately pending in said court, in which The Las Animas Land Grant Company was plaintiff and The United States of

America was defendant, as the same appear of record and on file in my office, not including, however, the petitions and other pleadings of the parties to the cases which were consolidated with this cause.

Witness my hand and the seal of said court, at my office in Santa Fé, New Mexico, this 28th day of January, A. D. 1899.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

Endorsed on cover: File No., 17,418. Court of private land claims. Term No., 304. The Las Animas Land Grant Company, appellant, *vs.* The United States. Filed May 22, 1899.

No. 65.

Brief of Yates for Appellant.

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JAMES H. McKENNEY, Clerk.

Filed Nov. 12, 1900. (17,418)

Supreme Court of the United States.

OCTOBER TERM 1899.

No. 65

THE LAS ANIMAS LAND GRANT COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

APPELLANT'S BRIEF AND ARGUMENT.

WILLIAM B. YATES,
Attorney for Appellant.

Gibbons, Barnard and Stilwell, Printers, Cor.

(17,418)

# Supreme Court of the United States.

## OCTOBER TERM 1899.

No. 304.

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THE LAS ANIMAS LAND GRANT COMPANY, APPELLANT,

*vs.*

THE UNITED STATES.

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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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## APPELLANT'S BRIEF AND ARGUMENT.

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### STATEMENT OF CASE.

The allegations of petition filed in this case are as follows:

On the 8th day of December, 1843, Cornelio Vigil and Ceran St. Vrain, residents of the then department of New Mexico, petitioned the government of New Mexico for a grant of land, which they described by natural boundaries, but without stating the quantity of land embraced in the described tract. On the 9th day of December, 1843, the government granted to them the land described in their

petition. On the 26th day of December, 1843, Vigil and St. Vrain were put in possession in the customary manner by a Justice of the Peace, and monuments were erected to mark the limits of the tract, following the lines described in the petition.

On the 7th day of March, 1844, Vigil and St. Vrain, according to the laws and customs of the Republic of Mexico, executed a deed of donation to various parties for the said described lands, and on February 2nd, 1848, the time of the ratification of the treaty between the United States and the Mexican Republic, commonly known as the Treaty of Guadaloupe Hildago, Vigil and St. Vrain, their heirs and assigns, it is alleged were in lawful and absolute possession under the laws, usages and customs of the Republic of Mexico, and have ever since remained in such possession.

The description of said lands is fully set forth in the transcript of record in Section 5 of petition, page 3. The correct translation of the Spanish petition is set forth at page 11 of abstract of record.

Pursuant to the provisions of the Act of Congress in such case made and provided, the then owners of this grant, which is known as the Las Animas Grant, presented the same for confirmation to the Surveyor General of the Territory of New Mexico, and pursuant to the provisions of said Act, the Surveyor General took testimony as to the nature, correctness, extent and bona fides of the grant, and on Sept. 17th, 1857, rendered his decision in favor of the validity of the grant in its entirety, confirmed the same and transmitted said report and confirma-

tion to Congress for its action in the premises. Congress confirmed his report on the 21st day of June, 1860, with the provision that claim No. 17 in name of Vigil and St. Vrain should not be confirmed for more than 11 square leagues.

Petitioner's allegation is that the action of Congress was not such a final action, as contemplated by the 8th section of Act of Congress of July 22, 1854.

Congress on February 25th, 1869, passed an act providing that the lands confirmed by the Statute of June 21, 1860, should be adjusted according to the laws of the public survey as nearly as practicable, and that the claims of actual settlers upon the land holding title under Vigil and St. Vrain, who may establish their claims within a year from the passage of this act, should have their titles confirmed, and that pursuant to said act, said actual settlers and representatives proved up their claims for lands aggregating $9,714.53, equivalent to 22 square leagues, and that patents were issued to them for the same.

No application was made by Vigil and St. Vrain or their representatives to have the title to said land confirmed in them as provided by said act, and neither of them, nor their legal representatives had ever assented to the provisions of said Acts of Congress of June 21st, 1860 and February 25, 1869.

By the Act of Congress of June 21, 1860, the bona fides of the grant as an empresario grant to Vigil and St. Vrain was recognized and confirmed by the government, and the same recognized as

valid under the laws of Mexico, and the title to said lands of the Las Animas grant was in the heirs, executors and assigns of said Vigil and St. Vrain.

On the 16th of October, 1858, one Romona Armijo, sole heir of Manuel Armijo, for a valuable consideration sold one sixth of said grant to Cosandra E. Baird, and in the year 1863 the government at March term of the United States District Court of the Third Judicial District of the State of Colorado, declared forfeited to the government of the United States,the said lands and ordered the same to be sold by the proper officer of the government of the United States, and on the 14th day of September, 1863, said interest was offered for sale, pursuant to said order by the Marshal of the Territory of Colorado, and bid in by St. Vrain for $1,000, he being the highest and best bidder, and on the same date the Marshal of the Territory of Colorado executed to St. Vrain a deed for the same.

By various mense conveyances the title of said lands became vested in the appellant.

During the time St. Vrain duly was seized of said interest in said land, to-wit, on the 12th day of June, 1867, he leased to the government for a period of fifteen years at the annual rental of one dollar, a portion of said tract of land and the government erected a government post or fort on the said land designated as New Fort Lyon; that on the same date the said St. Vrain leased to the government another portion of said tract of land for a period of fifteen years at an annual rental of one dollar, and by virtue of said lease the government

entered upon and took possession of the land and erected a government post or fort on the same.

No other person or persons are in possession of said grant or tract of land or any part thereof, holding or claiming to hold adverse possession to the same. The contention of the government is that by reason of the provisions of Section 5, of an Act entitled "An Act to Confirm Certain Private Land Claims in the Territory of New Mexico" approved February 25th, 1869, said plaintiffs are prohibited from having or maintaining this suit, and that by reason of the provisions of the Act of June 21st, 1860, and the Act of February 25th, 1869, said claim is one, the right to which has hitherto been lawfully acted upon by Congress, and this Court ought not to have or maintain jurisdiction over the same and for the further reason that said claim is not one which according to the law of nations, or stipulation of a territory, nor the laws and ordinances of the Republic of Mexico, this government ought to recognize this claim.

This action was begun on the 26th day of March, 1893, and after various continuances, the Court of Private Land Claims on the 5th day of October, 1898, without notice to appellant and without hearing any testimony whatever, ordered and decreed that said cause be dismissed, from which order and decree an appeal was taken.

Since this action was commenced in the Court of Private Land Claims, The Western National Bank of Pueblo has become interested in the same by the transfer to it for a full and valuable consid-

eration, of an undivided 40,000 acres interest of A. M. Pryor, one of the grantees in the title of said grant, and it is in behalf of said grant that this brief is filed.

## SPECIFICATIONS OF ERROR.

First. The Court below erred in entering a final decree in this case before hearing the cause on the petition and proofs, as required by 26 U. S. Statutes, 856, Sec. 6, cl. 3 and 857, Sec. 8, cl. 1.

Second. The Court below erred in entering a final degree in the absence of full legal proof and hearing, as required by 26 U. S. Statutes, 856, Sec. 6, cl. 3 and 857, Sec. 8, cl. 1.

Third. The Court erred in holding that the evidence before it was sufficient to authorize the granting of a decree against the appellants, or either of them.

Fourth. The Court below erred in not adjudging and decreeing that the appellants were entitled to equitable relief and rendering a decree confirming the claim of the appellants and specifying plainly the location, boundaries and area of the land claimed by appellants.

Fifth. The Court below erred in rendering judgment against the petitioners in said cause, and the appellants herein, upon the pleadings in said cause, and that said judgment is contrary to the law and the facts as stated in the pleadings in said cause.

## ARGUMENT.

The appellant proposes to argue the following propositions, to-wit:

I. The Court below did not follow the procedure laid down in the Act of Congress establishing the said Court in adjudicating said case.

Note—I need not make any argument on this first proposition, but simply refer the Court to 26 U. S. Statutes, 856, Section 6, cl. 3, and 857, Section 8, cl. 1.

2. This Court may on this appeal retry this cause, as well as the issues of fact as of law, and may cause testimony to be taken in addition to that given in the Court below and may amend the record of the proceedings below as truth and justice may require, and on such retrial and hearing, every question shall be opened and the decision of this Honorable Court thereof shall be final and conclusive.

Note—I need only state this second proposition and refer this Honorable Court to 26 U. S. Statutes, 858, Sec. 9, cl.

3. That the United States is of right estopped from asserting title to said lands or any part thereof by reason of the proceedings, orders and decrees by it had and made against the undivided interest of Casandra E. Baird, one of the grantees in said title, by the sale and conveyance of said interest by the U. S. Marshal, as in said pleadings fully set forth.

4. That the United States is of right estopped from asserting title to said lands or any part thereof, by reason of its tenancy of certain parts of

said grant under and by virtue of the said leases accepted by it from the said Ceran St. Vrain, one of the grantees in the title of said grant.

5. Had the whole tract included within the described boundaries been effectually severed from the public domain of the Mexican Republic by a perfect and valid grant, according to Mexican law and custom?

6. Did the Acts of Congress of June 21, 1860, and acts supplementary thereto, divest the said rights of Vigil and St. Vrain and their grantees under the said grant?

Having already disposed of the first two propositions, we direct our attention to the remaining propositions in their order.

FIRST.

THE UNITED STATES IS AND OF RIGHT OUGHT TO BE ESTOPPED FROM ASSERTING TITLE TO SAID LANDS, OR ANY PART THEREOF, BY REASON OF THE PROCEEDINGS, ORDERS AND DECREES BY IT HAD AND MADE AGAINST THE UNDIVIDED INTEREST OF CASANDRA E. BAIRD, ONE OF THE GRANTEES IN SAID TITLE, BY THE SALE AND CONVEYANCE OF SAID INTEREST BY THE UNITED STATES MARSHAL, AS IN SAID PLEADINGS FULLY SET FORTH.

While it is true that the United States is not bound by any statute of limitations, nor barred by any laches or negligence of its officers in a suit to enforce the rights and to protect the interest vested

in it as a sovereign government, in the case of fraud or mistake, yet, where in a case like this, it has treated the lands in question as the lands of a private individual and has by regular judicial proceedings obtained a judgment against the same, and has sold the same to satisfy this judgment to another private individual for the amount of the said judgment, it has no more right to repudiate said transaction by asserting a title or interest to the said lands paramount to the title conveyed by it to a purchaser at the United States Marshal's sale, than an individual would have under like circumstances. Equity and good faith would require that the Government should have no more right to practice a fraud upon individuals than individuals would have the right to practice a fraud on each other under like circumstances.

This question arose in Commonwealth vs. Andre, 3rd. Pickering, page 224, in which case the Commonwealth for a valuable consideration granted land to an alien, and it was held upon an inquest of office that the Commonwealth was estopped to set up the alienage of the grantee or of his heirs as the ground of an escheat. The Court in this case said: "This deed must operate as a rebutter, as it would if the individual were the grantor and with more reason, because the Commonwealth is not liable to an action. The Commonwealth,, if the land were recovered, would feel itself bound to repay the consideration money with interest; this would be a claim which could not be resisted without degrading the country."

Carver vs. Jackson, 4 Peters, 1. 87.
Branson vs. Wirt, 17 Wallace, 32. 42.
St. Paul R. R. Co. vs. 1st Div. St. Paul P. R. Co. 26 Minne., 31.
R. R. Co. vs. Schurmeir, 7 Wallace, 272.
Land Co. vs. Saunders, 103 U. S. Reps., 316. Note 8 at page 340.
Henry Fink, U. S. Marshal vs. Thomas O'Neill, 106 U. S. Reps., 272-281.
Rueter vs. Law, 94 Wis., 300.
Payne Lumber Co. vs. City of Oshkosh, 89 Wis., 443.
State vs. Jones Water Power Co., 66 N. W., 513.
City of Los Angeles vs. Cohn, 101 Cala., 373.
Simplot vs. Ry. Co., 16 Fed., 360.

SECOND.

THE UNITED STATES IS OF RIGHT ESTOPPED FROM ASSERTING TITLE TO SAID LANDS, OR ANY PART THEREOF, BY REASON OF ITS TENANCY OF CERTAIN PARTS OF SAID GRANT, UNDER AND BY VIRTUE OF THE SAID LAWS ACCEPTED BY IT FROM THE SAID SERAN ST. VRAIN, ONE OF THE ~~GRANTEE~~ GRANTORS IN THE TITLE OF SAID GRANT.

It is a general and well settled rule that a tenant cannot dispute his landlord's title. The foundation of this rule lies in the fact that a tenant, by his possession, acquires an advantage which is given him by his landlord. The estoppel which prevents a tenant who has acquired possession as such from claiming title adversely to his landlord, does

not depend on the validity of his landlord's title.

Good vs. Gaines, 145 U. S. Reps., 141.

THIRD.

THE NEXT QUESTION THAT ARISES IN THIS TITLE IS WHAT WERE ITS CONDITION AND NATURE AT THE TIME OF THE TREATY? HAD THE WHOLE TRACT INCLUDED WITHIN THE DESCRIBED BOUNDARIES BEEN EFFECTUALLY SEVERED FROM THE PUBLIC DOMAIN OF THE MEXICAN REPUBLIC BY A PERFECT AND VALID GRANT, ACCORDING TO MEXICAN LAW AND CUSTOM?

By the eighth and ninth articles of the Treaty of Guadaloupe Hidalgo, it was stipulated that Mexican citizens should be allowed to retain property they possessed in the territory ceded to the United States, and should be protected in its free enjoyment. For the purpose of settling claims of Mexican citizens to lands within the ceded territory, Congress, by Act of July 22nd, 1854, referred the subject matter of such claims to the Surveyor General of the Territory of New Mexico. That officer gave the case an examination and reported to Congress, September 17th, 1857, that in his opinion the grant was good and valid, according to the laws and customs of the Republic of Mexico and the Supreme Court of the United States, as well as of the Treaty Guadaloupe Hidalgo, and he proceeded to confirm the same and transmitted the proceeding to Congress for its action.

It appears that the following substantial facts

were before the Surveyor General when his determination was made, to-wit:

On the 8th day of December, 1843, Vigil and St. Vrain petitioned Armijo, Governor of New Mexico, for a grant of land situate in the new County Taos and embraced within Huerfano, Pesepa and Cacharas Rivers to their junctions with the Arkansas and Animas Rivers.

On the 9th day of December, 1843, Manuel Armijo, Governor of New Mexico, directed the Justice of the Peace of the proper jurisdiction, to place the parties in possession of the lands asked for by the petitioners, which was accordingly done on the 2nd day of January, 1844. The papers filed in the surveyor's office are the originals, duly authenticated by witnesses

It was also proved in evidence that the land had been in occupation from the time the grant was made up to the time when the Surveyor General rendered his decision whenever the conditions of the Indians would allow it to be cultivated and settled upon. At the period when said granting was made, the Province of New Mexico had just emerged from a series of revolutions and civil commotions, which had caused the general government of the republic to confer upon the government of the province extraordinary and almost absolute power in the things relating to the domestic affairs and internal government of the province.

Under this authority and the extraordinary powers vested in him, this grant is purported to have been made, and it is to be presumed that he

acted within the scope of his authority, as it has never been contested or contradicted.

It appears to the Surveyor General that the grant of the government was by the general, natural boundaries above referred to, and not of any specific quantity, and that possession had been delivered by the public officers, and the boundaries marked by mounds, as described in his certificate; that the proceeding had been had in respect to the grant, and its possession which resulted in the restoration of possession under the grant, pursuant to this decree of the departmental assembly and of the governor, and that the parties remained in possession, occupying as colonists, and claiming the whole of the land covered by the terms of the grant.

The objection is made that the governor exceeded his powers in making the grant. That by the laws of Mexico, such grants could only be made to the extent of eleven leagues to each person, and therefore the grant in question is to be construed as limited to twenty-two leagues within the described boundaries.

The Mexican law of 1824 and the regulations touching colonization are general provisions in relation to the quantity of public lands that might be granted to one person. They are not in terms, limitations upon the power of the governors of territories in making grants.

The claim was well known to be of the whole of the lands within the boundaries, for it was shown that those lands had been marked out and delivered by the Mexican officers, and were possessed by the

claimants and those holding under them, and it distinctly appeared, both by the terms of the grant itself and by the facts disclosed by Congress that the actual quantity was unknown.

The confirmation of such a claim is ex necessitate of the whole, and the fact that it turns out to be far larger than it might have been supposed, is no ground to diminish the force of the act. It is upon this confirmation that subsequent purchasers have relied, as well as the long continued possession and enjoyment of the lands in the grantees.

I can conceive of no greater act of injustice than now to hold that the confirmation by Congress can be held to be good for an amount of land less than the actual claim, indefinite and shifting in locality, and respect to which neither of the parties have asserted any claim.

Whether the departmental assembly in giving its approval could, if it saw fit, confirm a title to more than eleven leagues, it is not necessary to determine or ascertain. It is by settled law that the Treaty imposed an obligation on the United States to confirm equitable titles, arising under the acts of the Mexican authorities, that judicial possession, held for a long time after the grant by the Mexican Governor, gave an equitable title, but such an equitable title could embrace more than eleven square leagues, because the objection that the quantity claimed is excessive, is not an answer to the obligations of the Treaty, if the equity of a claimant embraces more than eleven square leagues, and that whether an approval or confirmation by

the departmental assembly could or could not give a legal title to more than eleven square leagues. Such an approval or confirmation followed by judicial possession could give an equitable title which Congress was bound to confirm where it was bona fide.

United States vs. Sutherland, 19 Howard, 363.
United States vs. Faucett, 21 Howard, 445.
Fremont vs. United States, 17 Howard, 542.
United States vs. Pacheo, 22 Howard, 225.
United States vs. Hartnett, 22 Howard, 286.
Beard vs. Federy, 3 Wallace, 478.

The correct translation of the petition of Vigil and St. Vrain clearly indicates that the granting asked for was an empressario granting. If it had not been, there would have been little cause for the frequent use for the words "colony" and "colonization" and such expressions as "settling families in the colony," unless such was the view which the granting power took of the nature of the grant.

See Maxwell Land Grant case, 121 U. S. Reps., 363.

The petition and the Governor's order formed the contract between the government and the petitioner, and they must be construed together. What is stated in either paper as to fact and intent must be taken as true.

United States vs. Baisdore, 11 Howard, 87.
Glenn vs. United States, 16 Howard, 256.
United States vs. Fremont, 17 Howard, 517.
Yontz vs. United States, 23 Howard, 489.

This act which vested a title under the laws of Mexico, a title solemnly guaranteed by the Treaty,

cannot on surmise or strained construction of the grant papers be divested, by either the Congress or the courts of the United States.

Strothers vs. Lucas, 12 Peter, 41.
United States vs. Peralto, 19 Howard, 343.
United States vs. Cambustin, 17 Sawyer, 575.

But even if this granting had been one of twenty-two square leagues,giving the juridical possession of the entire tract of land included within the out boundaries, was not only customary, but lawful. The grant then was afloat to be in the future definitely located, and it was the duty of the government to make such location.

Fremont vs. United States, 17 Howard, 542-548.
United States vs. Armijo, 5 Wallace, 449.
United States vs. McLaughlin, 127 U. S. Reps., 428-450.

Mexican land grants were sometimes the tracts designated by well defined boundaries, sometimes of a specific quantity of land lying within exterior boundaries embracing a greater amount, and sometimes of places by names when they were well known, and thus capable of identification.

Van Reynegan vs. Boulton, 95 U. S., 35.
Higueras vs. United States, 5 Wallace, 828.
Albiso vs. United States, 8 Wallace, 329.
Hornsby vs. United States, 10 Wallace, 224.

The effect of the delivery of juridical possession was to separate the land granted from the public domain and to vest the title absolutely in the grantees against the government, and the interest thus acquired by the grantees could not be divested

under the Mexican law any more than at common law, upon mere allegations and surmises.

United States vs. Santa Fe, 165 U. S., 675.
United States vs. Sandoval, 167 U. S., 278.
Rio Arriba L. & C. Co. vs. U. S., 167 U. S., 298.
Hornsby vs. United States, 10 Wallace, 240.
United States vs. Malarin, 1 Wallace, 290.
Graham vs. United States, 4 Wallace, 260.
United States vs. Peco, 5 Wallace, 536.

Under the colonization laws and regulations of Mexico, and under the expediente of grant in this case, it seems to me that the right of property and legal ownership of the whole tract of land, of which they had been given the juridical possession by the Justice of the Peace, that such title was absolute against the Mexican Government, subject to a defeasance, which could not be enforced by the government but by its citizens, who could denounce the land and assume the obligations of the original grantees, which had been forfeited.

The article of the Treaty applying to grants of realty in general is the eighth, which provides, "Mexicans now established in territories previously belonging to Mexico and which remain for the future within the limits of the United States, as defined by the present Treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof and removing the proceeds wherever they please."

Under this treaty, the grantees of the Las Ani-

mas Grant were to retain the property which they possessed in the ceded territory. The grant had been made in December, 1843. It was an empressario grant and in January, 1844, Vigil and St. Vrain had been placed in juridical possession of the entire tract as petitiond for and as shown by the map or deseno which accompanied their petition to the Governor. This possession operated under the Mexican law as a segregation of the entire tract of land from the public domain and the possession of the grantees was absolute against the Mexican government, and could only be divested by the proper legal procedure, the denouncement which had never been had.

Graham vs. Wallace, 4 Wall, 261.
Van Reyengar vs. Boulton, 95 U. S. Reps., 35.
United States vs. Peco, 5 Wall, 359.
Hornsby vs. United States,, 10 Wall, 240.
Fremont vs. United States, 17 Howard, 561.
United States vs. Pena. No. 72, decided Dec. 18, 1899, at Oct. term, 1899.

The whole title of Vigil and St. Vrain was not a title in fee simple, yet it would ripen into such by the fulfillment by the grantees of the implied conditions subsequent of colonization and cultivation, which had already been undertaken. The fulfillment of these conditions subsequent was rendered impossible by the act of the grantor, the Mexican Governor, and the grant became by international law, by our system of jurisprudence and by that of the civil law prevailing in Mexico, a grant of the entire tract in fee simple.

This title, as it existed under the Mexican law

at the time of the cession of New Mexico to the United States was that which Vigil and St. Vrain were to conserve and retain, and the right vested at once upon the ratification of the Treaty, and could not be divested by the declaration of war or by any act of Congress.

United States vs. Arredondo, 6 Perter, 645.

With reference to the adjustment of these land claims, Congress by the eighth Section of the Act of 1854, 10th Stat., 308, made it the duty of the Surveyor General of that territory to ascertain the origin, nature, character and extent of the same, and make a full report of his decision as to the validity or invalidity of each claim under the laws, usages, and customs of the country before the cession to the United States, with report according to a form to be prescribed by the Secretary of the Interior so to be laid before Congress for such action as might be deemed just and proper.

Tameling vs. United States, 93 U. S. Reps., 662.

Under this statute, the Surveyor General on September 17, 1857, recommended the Vigil and St. Vrain grant for confirmation in its entirety and transmitted his report to Congress for its action in the premises.

The great object of the Treaty so far as it undertook to deal with private interests was to preserve to those who had been Mexican citizens, all their property of every description. There were both perfect and imperfect titles to land, and in respect to those which were imperfect, the Treaty

could not be executed without giving effect to all the subsequent equities of each case.

Adams vs. Norris, 103 U. S. Reps., 593.
Beard vs. Federy, 3 Wall, 478-491.

By this Treaty, the property of Mexicans within the territory ceded by Mexico to the United States was entitled to protection, and Congress might either itself discharge the duty of providing the mode of securing those rights, or delegate it to a judiciary department.

Astiazaran vs. Santa Rita L. and M. Co., 148 U. S. Reps., 80.

Private rights of property in a ceded territory are no ways effected by the Treaty cession.

Interstate Land Co. vs. Maxwell Land Grant Co., 139 U. S. Reps., 569.

FOURTH.

DID THE ACT OF CONGRESS OF JUNE 21, 1860 AND ACTS SUPPLEMENTARY THRETO, DIVEST THE SAID RIGHTS OF VIGIL AND ST. VRAIN AND THEIR GRANTEES UNDER THE SAID GRANT?

Congress has no constitutional power to settle such rights under treaties. The construction of them is a peculiar province of the judiciary. Report must be had to the judiciary department in case of any doubt as to the grant title.

Wilson vs. Wall, 6 Wallace, 85-89.

Phillips vs. Mound City Asso., 124 U. S. Reps., 605-610.

Botiller vs. Dominiques, 130 U. S. Reps., 250.

Article three, Section two of the Constitution reads, "the judiciary power shall extend to all cases in law and equity arising under this constitution or laws of the United States and treaties made, or which shall be made under their authority.

This Court has said in Tennessee vs. Davis, 100 U. S., Reps., 264, what constitutes a case thus arising was early defined in the case cited from 6th Wheaton. It is not merely one where a party goes into court to demand something conferred upon him by the constitution or by law or a treaty. A case consists of the right of one party as well as the other, and may truly be said to arise under the constitution or a law or treaty of the United States whenever its correct decision depends upon the con struction of either.

This Court has also said in Fletcher vs. Peck, 6 Cranch, 114, 135, 136, "to a legislature all legislative power is granted, but the question of whether the act of transferring property of an individual to the public be in the nature of the legislative power, is well worthy of serious reflection." It is the peculiar province of the legislature to prescribe general rules for society. The application of these rules to individuals in society would seem to be the duty of their departments.

Again this Court has said in Osborne vs. United States Bank, 9th Wheaton, 74, 819, "this clause enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the ju-

dicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by the party who asserts his rights in the form prescribed by law. It then becomes a case and the Constitution declares that the judicial power shall extend to all cases arising under the constitution, laws and treaties of the United States.

So that the action of the Court of Private Land Claims in deciding that it "does not have jurisdiction of the subject matter for the reason that the right to the land claimed in said suits has hitherto been lawfully acted upon and decided upon by Congress" does not divest the rights of the appellants and their grantees herein, for the reason that their right and title to such grant is in no ways effected or concluded by said Acts of Congress. Said rights could only be divested by an adverse decision of the courts of the United States based upon a proper hearing and consideration of the facts of the case.

Respectfully submitted.

WILLIAM B. VATES,
Attorney for Appellant.

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No. 425

Opinion of the Court

Appellant

Filed Oct 2-, 1900.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1900.

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THE LAS ANIMAS LAND GRANT COMPANY, appellant,
v.
THE UNITED STATES.
No. 45.

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THE LAS ANIMAS OR VIGIL AND ST. VRAIN GRANT.

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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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BRIEF ON BEHALF OF THE UNITED STATES.

# In the Supreme Court of the United States.

OCTOBER TERM, 1900.

THE LAS ANIMAS LAND GRANT COMPANY, appellant,
*v.*
THE UNITED STATES. } No. 65.

THE LAS ANIMAS OR VIGIL AND ST. VRAIN GRANT.

**APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.**

**BRIEF ON BEHALF OF THE UNITED STATES.**

The appellant in this case was the plaintiff in one of five cases instituted in the Court of Private Land Claims, each involving the same subject-matter, although the grant claimed was differently designated as the Las Animas or the Vigil and St. Vrain grant, the maximum amount claimed in any of them being placed at 4,096,346 acres. These cases were as follows:

No. 44, *James Corrigan* v. *United States*, Vigil and St. Vrain grant.

No. 128, *Thomas J. Allen et al.* v. *United States*, the Las Animas grant.

No. 135, *George W. Thompson et al.* v. *United States*, Vigil and St. Vrain or Las Animas grant.

No. 154, *Las Animas Land Grant Company* v. *United States*, Las Animas land grant.

No. 216, *Luis J. Purdy et al.* v. *United States*, Las Animas grant.

These cases were by the court ordered consolidated and to proceed as one cause under the title of *James Corrigan* v. *United States*, No. 44 (R., 30).

A somewhat unusual situation, considering the magnitude of the grant and the stupendous value of the property claimed, developed at the time appointed for trial, when none of the various claimants appeared, although the interested parties had previously received full notice (R., 31), no evidence being introduced, and the court concluding its duty to be to make such disposition of the cause as the record warranted, resort was had to the pleadings as its sole source of information; and its decision, based thereupon, was that the cause be dismissed for want of jurisdiction, "for the reason that the right to the land claimed in said suits has hitherto been lawfully acted upon and decided by Congress" (R., 31), consonant with the prohibition of jurisdiction contained in subsection fourth of section 13 of the act of March 3, 1891, establishing the Court of Private Land Claims.

The petition and answer furnish a history of the action of the political branch of this Government upon the grant. No other questions raised by the pleadings were consid-

ered by the court, for the plaintiffs failed to make any attempt to sustain by evidence their claim as a valid and subsisting one against the United States. Eliminating all portions of the pleadings except those disclosing the history of the action by Congress upon the claim, it appears that—

Under the provisions of the act of Congress of July 22, 1854, on the petition of the then claimants, after hearing testimony, the surveyor-general of the Territory of New Mexico, on September 17, 1857, recommended the grant for confirmation by Congress to the full extent claimed, transmitting his report and record of proceedings preliminary thereto to Congress as provided by said act (R., 3), the claim being known as private land claim No. 17.

By act approved June 21, 1860 (12 Stat. L., 71), and having in mind this report and recommendation of the surveyor-general, Congress confirmed the grant in the name of the original grantees, specifically providing that not more than 11 square leagues each should be confirmed to said Vigil and St. Vrain. (R., 3, 4.)

Accompanying the bill which was duly enacted into said law (H. R. No. 195) was a report by Mr. Benjamin, of the Committee on Private Land Claims (36th Cong., 1st sess., Rep. Com. No. 228), the portion of which relating to this claim (private land claim No. 17) being as follows (R., 22–24):

> The Committee on Private Land Claims, to whom were referred House bill No. 195 and various reports of the surveyor-general of the Territory of New

Mexico in relation to private land claims in said Territory, have the honor to report:

That after examination of the various claims mentioned in the letter of said surveyor-general to the Commissioner of the General Land Office, dated the 12th January, 1858, they concur in the recommendation of the said officer that the said claims should be confirmed, with two exceptions, which they now proceed to notice:

* * * * *

The second exception made by your committee is in relation to claim No. 17, which the surveyor-general recommends in favor of Cornelio Vigil and Ceran St. Vrain for the full extent embraced in a survey annexed to the papers. The quantity of land embraced in this survey does not appear; but by a close examination of some of the distances shown and a rough calculation of the others, there can not well be less than 100 square leagues, and possibly much more. Now, a reference to the petition and grant shows that the claimants, on the 8th of December, 1843, petitioned Governor Armijo, stating that they had "examined the land embraced within the Huerfano, Piripa, and Cucharas rivers to their junction with the Arkansas and Anima rivers, and, finding sufficient fertile land for cultivation, an abundance of pasture and water, etc., they pray you to grant each one of us a tract of land in the above-mentioned locality, protesting that in the coming spring we will commence operations which will be continued until the colony shall be established and settled," etc.

On the 9th of December, 1843, the governor referred this petition "to the justice of the peace of the proper jurisdiction, who will give the posses-

sion referred to by the petitioners, as this Government desires to encourage agriculture and the arts."

On the 25th of December, 1843, the two claimants presented a petition to the justice of the peace, setting forth that the governor had granted them "the public land contained in the accompanying petition," and asking the execution of his order.

Under these petitions and orders the two claimants were placed by the justice of the peace on the 2d of January, 1844, in possession; not each "of a tract of land in the above-mentioned locality," but were jointly put in possession of the whole district of country, including the lands on both banks of three tributaries of the Napesta or Arkansas River, from their mouths nearly to their sources, and without the slightest apparent warrant in the governor's order for so exorbitant a grant.

If this demarcation of boundaries by the justice of the peace had been afterwards brought to the notice of the governor and approved by him, a grave question would still remain as to his power to concede entire districts of country without the authorization of the provincial assembly of the Mexican Congress; but your committee find no proof in the paper of approval of this action by any officer superior to the justice of the peace, and, as his power clearly could not go beyond the execution of the governor's orders, your committee can not concur in the recommendation of the surveyor-general that this grant be confirmed for the full extent claimed. It is, however, plain that these parties are entitled to have their title confirmed to some extent, and this involves the inquiry as to the true meaning of the words "a tract of land" claimed in the original petition.

Under the Mexican colonization law of 1824 and

the regulations of 1828 the extreme quantity allowed to be granted by the governor to any colonist was 11 square leagues. In the absence of any other guide your committee suggest that a restriction of the confirmation to an extent of 11 square leagues for each claimant would be the utmost they could fairly expect, and would be not only a fair but a liberal compliance with the obligation imposed on the good faith of the United States under the terms of the treaty of Guadalupe-Hidalgo.

In relation to the proper location of these tracts a difficulty would arise resulting from the fact, ascertained by your committee, that a certain number of settlers, represented to be forty of fifty, have settled on tracts of land conceded to them by the above-mentioned grantees in different parts of the tract set apart for them by the justice of the peace, so that if the two tracts of 11 leagues each were located in any part of the district of country referred to the location would necessarily exclude some of these settlers who have gone onto the land in good faith and ought not to be disturbed. This difficulty can only be avoided by surveying the tracts of these actual settlers, wherever found within the district, and deducting their area from the area of the two 11-league tracts, leaving the remainder only of these two tracts to be located in one body. To this mode of location the claimants, who were represented before your committee by Judge Watts as their counsel, and one of whom, Ceran St. Vrain, was present in person, have given their consent, and the committee has made, therefore, proper provision in the bill.

Afterwards, Congress passed another and further act in relation to this claim (act of February 25, 1869),

which was amendatory and explanatory of the act of 1860, and upon the bill so enacted, Senator Ferry, for the committee, submitted the following report (R., 24, 25):

> The Committee on Private Land Claims, to whom was referred House bill No. 1345, entitled "An act to amend an act entitled 'An act to confirm certain private land claims in the Territory of New Mexico,'" beg leave to report:
>
> Ceran St. Vrain and the heirs of Cornelio Vigil claimed, under a Spanish grant, the title to a large tract of land in the southern portion of Colorado. The tract claimed embraces two entire counties and portions of two other counties, there being now residing on the tract included in the claim of said parties over 1,000 voters of the Territory of Colorado, who are settlers upon said lands, and many of them have made valuable improvements upon said lands and claim them under the homestead and preemption laws of the United States. The cases of litigation have ensued and acts of personal conflict by reason of the conflict of claims upon said lands.
>
> By act of Congress of June 21, 1860, the claims of said Ceran St. Vrain and the heirs of Cornelio Vigil were confirmed to the extent of 11 leagues each, Congress refusing to confirm them to any greater extent, the amount of such confirmation being but a small proportion of the entire land claimed; but the claims so confirmed have never yet been located or surveyed, and their location is yet uncertain, and the parties have the right to locate them any place within the limits of their entire claim. By the terms of that act, provision was not made to compel a location of said claim.
>
> The settlers upon said lands demand that the

claimants should locate their claims, and this demand upon the part of the settlers is, in the opinion of your committee, just, and its justice has been urged upon our attention by the Delegate from Colorado, and we fully agree with him that the interests of his constituents who have settled upon said lands and the interests of the Territory require that the limits and boundaries of said claims should be settled.

The object and purpose of this bill is to provide for the immediate survey of the said claims and their location, and to quiet the title to the lands within the limits of the same.

Your committee therefore recommend the passage of the bill.

Under the provisions of this act awards of tracts of land aggregating 97,514.53 acres, the equivalent of 22 square leagues, were made to actual settlers thereupon, who received patents therefor, deriving their titles by deed from St. Vrain; the register and receiver, also, rejected other claims to tracts in said grant by derivative claimants of Vigil and St. Vrain (R., 5).

This is the history of the claim in Congress and the proceedings under the acts referred to.

It is admitted by the petition that the proceedings before the surveyor-general of New Mexico were instituted by the then owners of the grant. (R., 3.) Although the power of Congress to act upon the claim was not dependent upon the appearance of and prosecution by claimants, still it does appear by the report of the Senate committee that they were represented before it by Judge Watts as their counsel and by Ceran St. Vrain in person. (R., 24.)

The act of February 25, 1869, was passed, as the report of the committee discloses, to compel a location of the claim to the extent of the 22 leagues granted by the act of June 21, 1860, which carried no provision for compulsory location. The fifth section of the later act provides:

> *And be it further enacted*, That in case of the neglect or refusal of the said Vigil and St. Vrain, or either of them, to accept of the provisions of this act and the act to which this is amendatory, and to locate their said claims as provided therein, no suit shall be brought or proceedings instituted in any of the courts of the United States, by such party or by anyone claiming through or under them, to establish or enforce said claims, or for any cause of action founded upon the same, after six months from the passage of this act.

The act of March 3, 1891, creating and conferring jurisdiction upon the Court of Private Land Claims, provides in subsection fourth of section 13:

> No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority. (25 Stat. L., 854.)

It is believed that the trial court, under the state of the case appearing upon the record, and in view of the limitations contained in the acts of 1869 and 1891 just quoted, rightly determined the cause by dismissing the same for want of jurisdiction of the subject-matter, the right to the land claimed under the grant having hitherto been lawfully acted upon and decided by Congress. (R., 31.)

Even had the court determined this jurisdictional question differently, there was nothing in the record to justify any other judgment than a dismissal of the petition, the claimants having failed to sustain their claim by full legal proof to be presented at the hearing.

Respectfully submitted.

JOHN K. RICHARDS,
*Solicitor-General.*

MATTHEW G. REYNOLDS,
*Special Assistant to the Attorney-General.*

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# Supreme Court of the United States.

No. 65.—October Term, 1900.

The Las Animas Land Grant Company, Appellant, vs. The United States. } Appeal from the Court of Private Land Claims.

[December 3, 1900.]

Mr. Justice Peckham delivered the opinion of the Court.

The company has appealed from the judgment of the Court of Private Land Claims dismissing for lack of jurisdiction of the subject matter its claim, and also the several claims in that court which had been consolidated with it in the case now before us.

On March 2, 1893, the appellant filed its petition in the court below in regard to the land grant in question. It therein claimed to be the owner, through mesne conveyances, of a land grant made by the governor of New Mexico, in 1843, to two residents of the then department of New Mexico, (which was a department of the Republic of Mexico,) named respectively Cornelio Vigil and Ceran St. Vrain. It was alleged that the grant had been, subsequently to the cession of the territory to the United States by the government of Mexico, surveyed by the United States surveyor general for the State of Colorado, and that it contained 3,640,465.21 acres. It was also alleged that pursuant to the eighth section of the act of Congress, approved July 22, 1854, (10 Stat. 308,) the then owners of the grant presented the same to the surveyor general of the Territory of New Mexico, who, pursuant to the provisions of the said act, took testimony as to the nature, character and extent and *bona fides* of the grant, and on September 17, 1857, rendered his decision in favor of the validity of the grant in its entirety, and transmitted his report to the Congress of the United States for its action in the premises. Subsequently Congress passed the act approved June 21, 1860, (12 Stat. 71,) the first section of which, in relation to claim No. 17, (the claim in question,) enacted that it should not be confirmed for more than eleven square leagues to each of the claimants, Cornelio Vigil and Ceran St. Vrain. (This would amount to something in the neighborhood of one hundred thousand acres of land.)

The second section of the act provided for a survey of the claims of Vigil and St. Vrain, and directed that it should be made with reference to actual settlers holding possession under titles or promises to settle, which

had heretofore been given by said Vigil and St. Vrain in the tracts claimed by them, and these settlers' tracts were to be deducted from the area embraced in the twenty-two square leagues, and the remainder was to be located in two equal tracts, each in square form, in any part of the tract claimed by said Vigil and St. Vrain, selected by them, and it was made the duty of the surveyor general of New Mexico to immediately proceed to make the surveys and locations in accordance with the terms of the section.

It also appeared by the petition that Congress passed a further act in relation to this claim, approved February 25, 1869. (15 Stat. 275.) That act gave directions for the survey of the claims of Vigil and St. Vrain, and then directed that before the act of June 21, 1860, (*supra*,) confirming the grant *pro tanto*, should become legally effective the claimants or their legal representatives were to pay the cost of so much of the surveys as enured to their benefit respectively. The act further provided that upon the adjustment of the claims, according to its provisions, it was the duty of the surveyor general to furnish approved plats to said claimants or their legal representatives, and after the lines were run the surveyor general was to notify Vigil and St. Vrain, or their agents, of the fact of such survey being made, and those claimants were directed, within three months after notice of such survey, to select and locate their claims in accordance with the act, and also with the act of 1860, which was amended by the act of 1869, and in case they failed to make such selection and location they were to be deemed and held to have abandoned their claim.

Various other allegations were made in the petition, not now material.

The prayer was that the validity of the title to the grant to Vigil and St. Vrain and the right of the petitioner, as their grantee, by mesne conveyances, should be inquired into by the court, and that the grant, with the exception of tracts heretofore confirmed and awarded under the provisions of the acts of Congress of June 21, 1860, and February 25, 1869, might be confirmed to the petitioner, or to the heirs and legal representatives of the said Vigil and St. Vrain, and if any of the lands had been sold that their value might be inquired into, and the petitioner recover the same in place of such lands as may have been disposed of by the Government.

An answer was filed on the part of the Government, which put in issue all the allegations of the petition as to the validity of the grant, and the answer alleged that the grant was wholly unauthorized and void.

Among other things the answer of the Government also referred to and set out the report of the Senate committee to the Senate in 1860, which explained the reason for the act of 1860. Reference was made in the report to the original petition for the grant and to the language contained therein, which asked only for a grant of a tract of land within the boundaries of the land described in the petition, and not for a grant of the whole

land so described, and it was stated in the report that such language formed no justification for the grant of the whole land described in the petition; that such grant was the act alone of the justice of the peace, who was without jurisdiction, and the committee found no proof of the approval of his action by an officer superior to him, and as his power could not go beyond the execution of the governor's orders, the committee could not and did not concur in the recommendation of the surveyor general that the grant should be confirmed for the full extent claimed. The committee thought, however, that the parties were entitled to have their title confirmed to some extent, and to what extent involved the inquiry as to the true meaning of the words "a tract of land" as contained in the original petition, and the committee reported that as "under the Mexican colonization law of 1824 and the regulations of 1828, the extreme quantity allowed to be granted by the governor to any colonist was eleven square leagues; that in the absence of any other guide a restriction of the confirmation to the extent of eleven square leagues for each claimant would be the utmost they could fairly expect, and would be not only a fair but a liberal compliance with the obligation imposed on the good faith of the United States under the terms of the treaty of Guadalupe Hidalgo." After this report to the Senate, the act of 1860, giving to each of the claimants a confirmation for eleven square leagues, was passed. The act of 1869 was also set up in the answer.

The case was thus at issue, when, after notice to the claimants, it was called for trial in the court below, the record shows that "no appearance was made by the plaintiffs and the court took the matter under advisement." On October 5, 1898, the record shows that "it appearing from the allegations of the several petitions herein that this court does not have jurisdiction of the subject matter of the several actions, for the reason that the right to the land claimed in said suits has hitherto been lawfully acted upon and decided by Congress, it is ordered and decreed by the court that said causes be, and the same are hereby, dismissed." The land company has appealed from this judgment of dismissal to this court. The court decided the case upon a perusal of the petition, which showed the source of the grant and the action of Congress in relation to it, and held that it appeared therefrom the court had no jurisdiction.

The Court of Private Land Claims was specially organized by the act of Congress approved March 3, 1891, (26 Stat. 854,) for the purpose of hearing and determining claims of a particular character specially pointed out and described in the body of that act. It has no other jurisdiction than that granted by Congress, being confined entirely to claims of the character mentioned in the act.

The sixth section of the act describes generally the character of the claims submitted to the court for adjudication.

Section 13 of the act provides "that all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely: . . . Fourth. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority."

The history of the action of Congress in relation to this claim, as contained in the petition and in the answer, shows that, so far as the rights of the claimant under the land grants are concerned, those rights had been lawfully acted upon and decided by Congress prior to the passage of the act of 1891. The action of Congress in the act of 1860, and as thereafter amended in 1869, was a final adjudication which granted eleven square leagues to each of the two claimants and rejected and refused to confirm the grant for any larger amount.

The claim in this case is thus brought directly within the fourth subdivision of section 13, above set forth, and it is perfectly clear that Congress did not give the Court of Private Land Claims jurisdiction to determine the rights of the parties in cases of this description.

Whatever the rights of the claimant may be, if any, to have its claim decided by a judicial tribunal, it certainly has no right to ask that the Court of Private Land Claims shall pass upon its claim when, by the very act which creates that court, it is prohibited from exercising jurisdiction in a case like the one before us.

The judgment of the court below was, therefore, right, and must be

*Affirmed.*

True copy.

Test:

*Clerk Supreme Court, U. S.*